

Correspondence

Item No. 2a

Newport Beach Country Club

PA2005-140

LATHAM & WATKINS LLP

650 Town Center Drive, 20th Floor
Costa Mesa, California 92626-1925
Tel: +1.714.540.1235 Fax: +1.714.755.8290
www.lw.com

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November 7, 2011

Newport Beach Planning Commissioners
Newport Beach Planning Commission
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92658

Re: Proposed Transfer of Development Rights from Newport Beach Marriott Hotel
(Anomaly 43) to Newport Beach Country Club (Anomaly 46);
Project File No. PA2005-140

Dear Commissioners:

Pursuant to your direction at the October 20, 2011 Planning Commission meeting, we met on October 28 with Planning Director Kim Brandt, Assistant City Attorney Leonie Mulvihill, Principal Planner James Campbell, and the applicant's attorney, Tim Paone, to further discuss a potential use conversion. Your staff was very generous with its time, and has been a pleasure to work with.

We believe we have reached a solution that provides significant benefits to the City, allows the Tennis Club project to move forward as planned, and preserves the development rights for 27 hotel units at Anomaly 43. We have taken the step of preparing an analysis of the Use Conversion methodology to demonstrate that the Use Conversion is consistent with the General Plan and Zoning Code, and to provide the Planning Commission, staff, and the applicant the opportunity to consider the Use Conversion at the hearing. Although staff has expressed some skepticism, we have heard no objections that, in our view, would place a Use Conversion outside of the discretion of the Planning Commission to recommend, or outside of the discretion of the City Council to adopt. An Alternative Report for your consideration is attached hereto as Exhibit A, and explains why a use conversion is legal and is good policy.

Additionally, as we said at the October 20 hearing, we believe the Use Conversion is the fairest outcome given HHR Newport Beach LLC ("Host")'s substantial interest in the 611 hotel units assigned to Anomaly 43 (of which the project applicant proposes to use 27 to support its project). To underscore the fairness of our proposed solution, and our standing to suggest such a solution, we have enclosed as Exhibit B hereto a brief outline of the relevant history for these 611 units.

LATHAM & WATKINS^{LLP}

We are submitting these materials today for your review and assessment, and so they may be included in the packet for the Planning Commission meeting on November 17, 2011. We look forward to the meeting and answering any questions you may have. In the meantime, we will continue to work with staff and the applicant with the goal of securing consensus on a use conversion. Please do not hesitate to contact me at (714) 755-8168 to discuss these comments.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Paul N. Singarella', written over the closing 'Very truly yours,'.

Paul N. Singarella
of LATHAM & WATKINS LLP

cc: Ms. Kim Brandt
Ms. Leone Mulvihill, Esq.
Ms. Carol McDermott

**EXHIBITS A AND B TO NOVEMBER 7, 2011
LATHAM & WATKINS LLP LETTER RE:**

**Proposed Transfer of Development Rights from Newport Beach
Marriott Hotel (Anomaly 43) to Newport Beach Country Club
(Anomaly 46); Project File No. PA2005-140**

TAB A

Conversion of Use

Alternative Report and Findings

Project Setting:

The subject property is approximately 143 acres in size and currently improved with a private golf course (Newport Beach Country Club) and a private tennis club (former Balboa Bay Racquet Club). The subject property is generally bordered by East Coast Highway to the south, Jamboree Road to the west, Santa Barbara Drive and Newport Center to the north, and Corporate Plaza West to the east and south. The tennis club (Tennis Club site) is located at the southeast corner of the subject property while the golf course (Golf Club site) occupies the remaining westerly side of the property. The Tennis Club site is presently improved with 24 tennis courts, a 3,725 square-foot tennis clubhouse and 125 surface parking spaces.

The Golf Club site is presently improved with a 6,587-yard, 18-hole golf course and related practice facilities, a 23,469 square-foot clubhouse, a 6,050 square-foot golf cart storage barn, a 2,010 square-foot greens keeper building, and 420 surface parking spaces. Main vehicular access to the subject property is from a private drive way (Country Club Drive) that connects to East Coast Highway at Irvine Terrace Drive, a signalized intersection. A secondary access is provided from Newport Center Drive via Farallon Drive.

Project Description:

Golf Realty Fund, the land owner, proposes a Planned Community Development Plan (PCDP) for the redevelopment of the existing private golf course clubhouse, parking lot, and tennis club. Additionally, the PCDP provides for the conversion of 17 tennis courts at the Tennis Club site to five (5) single-unit residential dwellings "Villas" (which are part of the Project, but which are not part of the conversion analysis) and 27 short-term lodging units "Bungalows."

Background:

Golf Realty Fund previously identified a Transfer of Development Rights (TDR) as a means of converting the tennis court area into the 27 short-term lodging units. Host Hotels and Resorts, the owner of the transferor site, has indicated that it opposes the transfer and intends to put to use through a consensual transfer, or its own development, the 27 hotel units that would be the subject of the TDR proposed by the applicant. At the October 20, 2011 Planning Commission hearing, the Planning Commission directed staff, Host Hotels and Resorts, and the applicant to review a Conversion of Use alternative for implementing the Project that is consistent with the General Plan and Zoning Code. It has been determined that a use conversion is consistent with the General Plan and Zoning Code.

Accordingly, the Project can be modified to remove the TDR approach and substitute in its place a Conversion of Use methodology which achieves the same result as the previously proposed TDR. Either the TDR or the Conversion of Use process achieves the same results, but the latter methodology results in additional benefits to the City discussed in the findings below. Both

strategies are in compliance with the City's General Plan and Zoning Code. This report reviews the Conversion of Use approach upon which the approval can be based.

Conversion of Use:

The TDR methodology in the City of Newport Beach Zoning Code Chapter 20.46 (New Code) includes the Conversion of Use of non-residential development intensity: "If the requested transfer includes the conversion of non-residential uses, the application shall also identify the quantity of entitlement, by use category, before and after the transfer (Newport Beach Zoning Code 20.46.040)."

The TDR or Conversion process was created to ensure that development intensity was consistent with transportation infrastructure capacity in a given area. The General Plan acknowledges this concept within the Newport Center area at General Plan Policy LU6.14.3 - Transfers of Development Rights:

"Development rights may be transferred within Newport Center, subject to the approval of the City with the finding that the transfer is consistent with the intent of the General Plan and that the transfer will not result in any adverse traffic impacts."

Therefore, Transfer or Conversion of development rights must be traffic neutral and follow the Zoning Code procedures in chapter 20.46. In this case, a TDR is not needed because there are enough existing traffic trips and intensity already on the site such that a Conversion of Use may occur.

Methodology and Analysis:

The proposed Project has been grandfathered under an earlier version of the Zoning Code. However, the Zoning Code—both the previous version and the current version—allows Planned Community Development Plans to conflict with and take precedence over the Zoning Code.

As such, the Planned Community Development Plan can be amended to include provisions that parallel section 20.46.040 of the current Zoning Code discussed below. This will allow the conversion to be governed by a standard that meets the intent of the General Plan and Zoning Code and assures that conversion does not generate traffic or intensity that would have potential negative environmental impacts.

The project proposes to convert 17 tennis courts to a hotel type use. As noted in Zoning Code Section 20.46.020, conversion of use is permissible within all zones of the City as long as the findings in the Zoning Code can be made. Use conversion procedures are found in Zoning Code Section 20.46.040, and require the Planning Department to conduct a traffic analysis and intensity analysis to ensure that the project does not impact the local transportation network.

Traffic Analysis:

The tables below illustrate the traffic trip generation rates for the existing and proposed uses. Note that the trip generation rate for a golf course is based on the number of golf holes (18) and the rate for a tennis club is based on number of courts (24). Tennis clubs are a high traffic generator based upon ITE Trip rates; the loss of 17 courts gives the project a reduction of daily trips and AM/PM peak hour trips. Inclusive of the hotel units, there is a net reduction of 389 daily trips for the entire development. Therefore the conversion of 17 tennis courts to 27 hotel units is trip neutral and will not result in a net negative impact on the overall circulation system in the immediate area given the overall reduction in daily trips.

Trip Generation Rates

Land Use	Rate Type	Size/Unit	AM Peak Hour (Total)	PM Peak Hour (Total)	Daily (Total)
Golf Course	ITE	Holes	2.22	2.74	35.75
Tennis Club	ITE	Court	1.31	3.35	28.7
Hotel	ITE	Room	0.56	0.59	8.17
SFR	ITE	DU	0.75	1.01	9.57

Existing Use

Land Use	Rate Type	Size/Unit	AM Peak Hour (Total)	PM Peak Hour (Total)	Daily (Total)
Golf Course	ITE	18 Holes	40	49	643
Tennis Club	ITE	24 Courts	31	80	929
Total			71	130	1572

Proposed Use

Land Use	Rate Type	Size/Unit	AM Peak Hour (Total)	PM Peak Hour (Total)	Daily (Total)
Golf Course	ITE	18 Holes	40	49	643
Tennis Club	ITE	7 Courts	9	23	271
Hotel	ITE	27 Room	15	16	221
SFR	ITE	5 DUs	4	5	48
Total			68	94	1183

Intensity Analysis:

Zoning Code Section 20.46.040(D) states that, "if the transfer request involves the conversion of uses, the Director shall perform a land use intensity analysis to determine the floor area that could be developed with and without the transfer. For purposes of this analysis, theater use shall be allocated fifteen (15) square feet per seat. Hotel use shall be allocated the number of square feet per room at which it is included in the General Plan. When the General Plan does not specify intensity for hotel rooms, it shall be as determined by the Director."

The Project includes the conversion of 17 existing tennis courts with an average floor area of 2808 square feet to 27 hotel units. Regulation tennis court dimensions are 78' x 36'. To remain conservative in the analysis, the square footage number used is only inclusive of the court

dimensions and does not include edge area and areas for observation within the fenced tennis court area.

The proposed Project is located in General Plan Anomaly 46. General Plan Table LU2 designates Anomaly 46 with 3,725 square feet and 24 tennis courts. Table LU2 does not assign numerical square footage intensity to the tennis courts and allows ancillary uses without designation of square footage. Therefore, the square footage associated with the tennis courts was determined as described above. The tennis club is also located within the PC – Planned Community zone which allows for flexible development standards to achieve a superior project. As noted in Zoning Code Section 20.46.040(D), when the General Plan does not specify an intensity for certain uses, that intensity may be determined by the Planning Director. As such, the PCDP text can be amended to specify what is implicit in the General Plan: that the tennis courts have intensity equal to their area, which is at least 2808 square feet per court.

Similarly, Table LU2 does not assign a square footage value to hotel units. As noted in Zoning Code Section 20.46.40(D) the hotel room intensity may be specified by the Planning Director if not specified in the General Plan. In this analysis an intensity of approximately 1,045¹ square feet has been assigned to the hotel units.

The Tennis Club Site (Tennis Clubhouse & Courts, Bungalows & Villas)

Existing Improvements		Proposed New Improvements	
Component	Floor Area (sq. ft.)	Component	Floor Area (sq. ft.)
Clubhouse	3,725	Clubhouse	3,725
24 Tennis Courts	67,392 ²	7 Tennis Courts ³	19,956
		27 Bungalows	28,219
		Bungalow Spa	7,490 ²
		Concierge & Guest Meeting Facility	2,170 ²
		5 SFR	N/A
Total sq. ft	71,117		61,560

As shown in the table above, the proposed Project will reduce the existing floor area of the Tennis Club facility by approximately 10,000 square feet. The Project is therefore consistent with the development intensity of the site.

¹ The Planning Director previously designated each Bungalow unit with 1045 square feet of intensity in the August 4, 2011 Planning Commission Staff Report.

² 2808 sf / court

³ 17 of 24 courts will be demolished; and one new stadium court will be constructed.

Green Light Analysis:

Charter Section 423 also known as “Greenlight” requires that any major amendment to the General Plan be put before voters. Conversion of Use and TDR already are established within the General Plan and the Project does not require a General Plan amendment. Therefore Greenlight does not apply to either TDR or Use Conversion methodology used to achieve the proposed Project.

The spirit and intent of Greenlight is to carefully consider major changes in traffic, density or intensity caused by development. Significant increases in traffic, density, and intensity in Greenlight are defined as “100 peak hour trips (traffic), or over 100 dwelling units (density), or over 40,000 square feet of floor area (intensity).”⁴ As shown in the analysis above, the proposed Project will be trip neutral, only adds 27 bungalow units, and proposes no increase in the intensity on site. The Project not only is exempt from Greenlight, it falls below the thresholds which require review under the spirit of Greenlight.

Findings:

Zoning Code Section 20.46.050 provides that the Planning Commission and City Council make certain findings to allow the conversion of use. As stated above, this standard can be incorporated into the PCDP text. The findings can be made and are evaluated below on the following basis:

A. The reduced density/intensity on the donor site provides benefits to the City, for example:

- 1. The provision of extraordinary open space, public view corridor(s), increased parking, or other amenities;**
- 2. Preservation of an historic building or property, or natural resources;**
- 3. Improvement of the area’s scale and development character;**
- 4. Reduction of local vehicle trips and traffic congestion; and**
- 5. More efficient use of land.**

The conversion of use reduces the overall number of trips being generated at the Project site, creating a reduction in projected traffic congestion. In addition, the conversion of use will preserve visitor serving units in the Coastal Zone, which is considered a public benefit by the City as well as the California Coastal Commission. The conversion preserves development intensity in the L-1 statistical area providing future significant benefits to the City through additional transient occupancy tax revenue, and additional economic activity created by that anticipated intensity. The future new revenue can be used to support core city services like police, fire, parks and recreation, and library services which provides benefit throughout the City. The Tennis Club facility also represents an in-fill development site. By constructing hotel units on an already developed area, the project will preserve natural resource areas that otherwise

⁴ Charter Section 423

may be developed with hotel units. Finally, the floor area used for the hotel units is less than that of the current tennis court facility representing a more efficient use of land.

B. The transfer of development rights will not result in any adverse traffic impacts and would not result in greater intensity than development allowed without the transfer and the proposed uses and physical improvements would not lend themselves to conversion to higher traffic generating uses;

As shown in the analysis above, the conversion of use will not result in any adverse traffic impacts, because peak hour trips and total trip generation will be less than the existing use. In addition, the 24-court tennis facility including ancillary uses amounts to intensity than the proposed project and therefore the conversion represents a reduction in intensity from the existing uses.

C. The increased development potential transferred to the receiver site will be compatible and in scale with surrounding development and will not create abrupt changes in scale or character;

The proposed Project will maintain the tennis court use on site and add hotel and single-family units that are compatible with adjacent uses. The site currently supports single-family residential units adjacent to the golf course, while several different properties in the Newport Center include hotel units. The Project proposes single-story bungalow style hotel units which will be compatible with the architectural style of adjacent residences. Therefore, the Project will be compatible in scale with the surrounding development and will not create an abrupt change in scale or character.

D. The receiver site is physically suitable for the development proposed taking into consideration adjacent circulation patterns, protection of significant public views and open space, and site characteristics, including any slopes, submerged areas, and sensitive resources. (Ord. 2010-21 § 1 (Exh. A)(part), 2010)

The proposed conversion is physically suited to the site, because it will provide a more compact footprint for the facility, creating a more economical use of the land. The reduction in traffic trips generated by the proposed Project will not change or interfere with existing circulation patterns. The project proposes low rise development which will not impact any public views or site characteristics. The Project is an infill development site, and therefore sensitive resources are not present.

TAB B



Brief history of Newport Beach Marriott site

This document briefly describes the entitlement history of the Newport Beach Marriott ("Marriott") site, which is owned by HHR Newport Beach LLC ("Host"). The City of Newport Beach's ("City") General Plan designates 611 hotel units for Anomaly 43, which is the Marriott site. The site is currently developed with 532 hotel units, leaving a balance of 79 units.

The City previously has affirmed that 611 rooms can be built at the hotel site.

The City originally amended its General Plan to allow 611 hotel units at the Marriott site in 1983. Since that time it has affirmed that 611 units can be built at the site, and also that, if not used on site, the hotel may transfer them with the City's consent. Relevant history includes:

- Santa Barbara Condominiums project. On January, 10, 2006, the City Council approved the Santa Barbara Condominiums project. The project included subdividing the Marriott site into two parcels and amending the General Plan to allow 79 residential units on the smaller, 4.25-acre parcel, adjacent to the preexisting hotel.
 - The staff report specifically states that the hotel may construct the 79 units on site or transfer them to another site with the City's consent. "The proposed residential project would add an additional 79 units to the Block 900 – Hotel Plaza area, an increase from 67 to 146 units. The existing Marriott Hotel currently has 532 rooms (79 rooms below the total 611 room allocation). The hotel could conceivably construct the remaining 79 rooms on the adjacent site, or potentially transfer the entitlement of the remaining rooms (with City approval) within the Newport Center area." (Emphasis added.) (Exhibit 1.)
 - The project's CEQA review similarly allows Host to develop the 79 units on site or transfer them. The mitigated negative declaration prepared for the Santa Barbara Condominiums project similarly indicates that Host may develop or transfer the 79 unbuilt hotel units: "The existing Marriott Hotel currently has 532 rooms (79 rooms below the total 611 room allocation). The hotel could conceivably construct the remaining 79 rooms in the future on the adjacent hotel site, or potentially transfer the entitlement of the remaining 79 rooms (with City approval) within the Newport Center area." (Exhibit 2.)
 - The Planning Commission minutes also reflect that the 79 units would remain on the hotel site. "Chairperson Toerge asked if the new condominiums would absorb any of the 79 unused hotel room allocation. He was answered no." (Exhibit 3.)
 - Resolution 2006-2 approving the project specifically finds that the entitlement for the 79 undeveloped hotel units was not reduced. "Although the change in land use designation will reduce the land available for visitor serving commercial uses by 4.25 acres; the opportunity to construct remaining hotel room entitlement of 79 rooms would not be lost and they could be constructed nearby within the portion of the Newport Center that is located within the Coastal Zone." (Exhibit 4.)

- \$10,000,000 in mitigation to be paid for the 79 new units. As part of the creation of 79 new residential units, the property owner is required to pay \$10 MM in mitigation--\$5 MM as a condition of the Coastal Commission approval and \$5 MM as a condition of the City's approval. (Exhibit 5 [California Coastal Commission Resolution on City of Newport Beach Local Coastal Program Amendment 1-06] at p. 6; Exhibit 6 [July 24, 2007 City Council staff report].)
- 2006 General Plan adoption. The City adopted the new General Plan in 2006. This was ratified by a November 7, 2007 vote of the people.
 - The General Plan specifically designates the Marriott for 611 hotel units. The Newport Beach Marriott is located in Anomaly 43 of the L1 statistical area of the City's General Plan. Table LU-2 of the General Plan Land Use Element designates a development intensity of 611 hotel rooms for Anomaly 43. (Exhibit 7.)
 - Figure LU-13 further suggests that Anomaly 43 corresponds to Host's real property (the Marriott site). (Exhibit 8.)
- In the May 11, 2004 substantial conformance review, the City reiterated that the site is authorized to build 611 hotel rooms. In 2004, the Marriott Hotel operated 586 hotel rooms. It sought City approval to consolidate some of the rooms into larger suites and into other amenities and facilities, bringing the total number of rooms down to 532.
 - The City Planning Director found that the hotel has a right to build 611 total rooms. In the staff report for the substantial conformance review, the Planning Director specifically found that the hotel is authorized to build 611 hotel rooms: "The hotel is currently authorized 611 hotel rooms and currently operates 586." (Exhibit 9.)
- The previous General Plan clearly indicated that a total of 611 hotel rooms can be built at the site. Previous versions of the General Plan also clearly stated that a total of 611 hotel rooms can be built at the site. For example, in 1995, the Land Use Element stated that Block 900 – Hotel Plaza was "designated for Administrative, professional, and Financial Commercial and Multi-Family Residential land uses. The allowed development is 611 hotel rooms with ancillary hotel support facilities and 16,630 sq.ft. of office development. The residential site is allocated 67 dwelling units." (Exhibit 10.)

The Coastal Commission relied on the understanding that 611 hotel units can be built at the Marriott site.

The Santa Barbara Condominiums project required an amendment to the City's Land Use Plan, to change the designation of 4.25 acres from Visitor-Serving Commercial to Medium Density Residential. The Coastal Commission was concerned that changing the designation of the 4.25 acres (the smaller portion of the subdivided Marriott site) would reduce the availability of visitor-serving coastal uses. It relied on the City's approvals to conclude that the project would not result in the Marriott site losing any of the remaining 79 units.

- "In order for the proposed land use conversion from Visitor-Service Commercial to Medium Density Residential to be found consistent with the Coastal Act, it must be appropriately mitigated since the proposed land use change would allow for residential development on the subject property, which is not a priority use within the Coastal Zone. The proposed amendment is a project specific request. A corresponding coastal development permit (5-07-085) for the construction of condominiums at this location has been submitted and will be considered at a subsequent hearing. It should be noted that with this corresponding project, Marriott's property would not lose any entitlement to the 611 rooms allowed on the site (currently according to the applicant, there are 532 rooms with a 75% occupancy.)" (Emphasis added.) (Exhibit 11 [California Coastal Commission Resolution on City of Newport Beach Local Coastal Program Amendment 1-06].)

The Marriott has fully mitigated traffic impacts for the hotel rooms.

The City prepared a full environmental impact report when it amended the General Plan in 1983 to approve the site for 611 hotel units. As part of the environmental review and project approval, the Marriott was required to implement extensive mitigation. This environmental impact report required Marriott to mitigate for the traffic impacts of the entire 611 hotel rooms.

- The EIR analyzes and imposes mitigation on trips for buildout of the entire 611 hotel rooms.

TABLE E

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TRAFFIC GENERATION

lsa

Period	Trip Generation Rate ¹	Estimated Trip Ends ²
Daily	12.0	2,800
P.M. peak hour		
Incoming	0.5	120
Outgoing	0.3	70
2.5 peak-hour period		
Incoming	1.0	240
Outgoing	0.6	140

Source: Weston Pringle & Associates, July 1982.

¹Trip ends per room.

²Based upon 234 guestrooms.

Full expansion was taken into account in analysis and therefore mitigated for.

(Excerpt from EIR; see Exhibit 13 for full EIR traffic study.) The 234 units represents the increase in units from 377 to 611 units that was entitled in 1983.

- The Planning Director's supplemental staff report indicates the hotel was required to pay \$603,800 for traffic and noise mitigation. "It is recommended that the City Council's approval of this project require the deposit of \$361,800.00, noise wall, traffic signal and the additional circulation system improvement funds, prior to the issuance of any grading or building permits, and the remaining \$242,000.00 TPO circulation system improvements, be deposited prior to occupancy of any portion of the project's facilities, other than those designed for parking." (Exhibit 12.)

EXHIBIT 1

**CITY OF NEWPORT BEACH
CITY COUNCIL STAFF REPORT**

Agenda Item No. 28
December 13, 2005

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

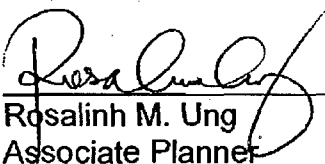
FROM: Planning Department
Rosalinh Ung, Associate Planner
(949) 644-3208
rung@city.newport-beach.ca.us

SUBJECT: Santa Barbara Condominiums
900 Newport Center Drive
(PA2004-169)

APPLICANT: Lennar Homes

The applicant is requesting the proposed residential project deliberation be continued to the January 10, 2006 City Council meeting. The request was necessary in order for the applicant to finalize their discussions with the Newport Beach Country Club regarding the interface between the golf course and the proposed residential project.

Prepared by:


Rosalinh M. Ung
Associate Planner

Submitted by:


Patricia L. Temple
Planning Director

Attachment: Applicant's Letter

**CITY OF NEWPORT BEACH
CITY COUNCIL STAFF REPORT**

Agenda Item No. 28
December 13, 2005

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Planning Department
Rosalinh Ung, Associate Planner
(949) 644-3208
rung@city.newport-beach.ca.us


SUBJECT: Santa Barbara Condominiums
900 Newport Center Drive
(PA2004-169)

APPLICANT: Lennar Homes

On November 22, 2005, the applicant requested a continuance to December 13, 2005. The request was necessary in order for the applicant to finalize their discussions with the Newport Beach Country Club regarding the interface between the golf course and the proposed residential project.

As of December 2, 2005, Lennar Homes and the Newport Beach Country Club have had several meetings. While these meetings have been productive, they have not reached a conclusion as of yet. The applicant, however, is expecting to have a resolution to present to the City Council at the meeting.

Prepared by:



Rosalinh M. Ung
Associate Planner

Submitted by:



Patricia L. Temple
Planning Director

**CITY OF NEWPORT BEACH
CITY COUNCIL STAFF REPORT**

COUNCIL AGENDA

NO. 28

12-13-05

Agenda Item No. 13

November 22, 2005

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Planning Department
Rosalinh Ung, Associate Planner
(949) 644-3208
rung@city.newport-beach.ca.us

SUBJECT: Santa Barbara Condominiums
900 Newport Center Drive
(PA2004-169)

APPLICANT: Lennar Homes

ISSUE

Should the City Council adopt a Mitigated Negative Declaration and approve the applications listed below to allow the development of 79 condominiums on a 4.25 acre site presently developed with an outdoor tennis complex operated by the Newport Beach Marriott Hotel?

RECOMMENDATION

Staff recommends that the City Council hold a public hearing and approve the request by adopting Resolution No. 2005-____ for General Plan Amendment No. 2004-005, LCP Land Use Plan Amendment No. 2005-001, Tentative Parcel Map No. 2005-014, Tentative Tract Map No. 2004-004(16774), Traffic Study No. 2005-002, Coastal Residential Development Permit No. 2005-004 and Mitigated Negative Declaration (SCH No. 2005-071067) and introducing Ordinance No. 2005-____ for Planned Community Development Plan No. 2005-003, and passing the ordinance to a second reading for adoption on December 13, 2005.

DISCUSSION

On November 3, 2005, the Planning Commission voted 6 ayes (one recused) to recommend approval of the proposed project to the City Council. The project involves the following discretionary applications for the City Council to consider:

- General Plan Amendment - Change the land use designation of the 4.25-acre site from Administrative, Professional, & Financial Commercial to Multiple-Family Residential.
- LCP Land Use Plan Amendment - Change the land use designation of the 4.25-acre site from Administrative, Professional, Financial Commercial to Multiple-Family Residential (1990 LCPLUP) or from Visitor-Serving Commercial to Medium Density Residential (2004 LCP).

- Planned Community Development Plan Text Adoption and Waiver of Minimum Acreage - Rezone the subject property from APF to the PC District; adopt a Planned Community Development Plan to establish use and development regulations; and consider a waiver of the 10-acre minimum land area requirement for Planned Community District adoption.
- Subdivision - Tentative Parcel Map to subdivide the 4.25-acre property from the 13.79-acre Marriott Hotel development. Tentative Tract Map to subdivide the 4.25-acre property for condominium ownership.
- Traffic Study – Traffic analysis pursuant to the Traffic Phasing Ordinance (TPO).
- Coastal Residential Development Permit – For the construction of 10 or more new dwelling units within the Coastal Zone.

The project consists of 79 residential condominium units with eight different floor plan options, ranging from 2,363 to 4,018 square feet in size. Access to the new residential development will be via two driveways from Santa Barbara Drive. The project is designed with two subterranean parking levels, and 201 parking spaces for residents and guests. The minimum building front, side, and rear setbacks proposed for the development are 15, 7 and 13 feet respectively.

Land Use Element

The current designation is Administrative, Professional, & Financial Commercial and the residential condominium project is consistent with the proposed Multi-Family Residential land use designation. The two percent (2%) reduction in APF designation in Newport Center proposed by the project is not a significant loss of opportunity for commercial/office uses as the site is being used for tennis courts and is an ancillary use to the existing hotel and club. In making its recommendation for approval, the Planning Commission believes the project to be compatible with the adjacent hotel and golf course, and nearby residential and office uses. The proposed residential project would add an additional 79 units to the Block 900 – Hotel Plaza area, an increase from 67 to 146 units. The existing Marriott Hotel currently has 532 rooms (79 rooms below the total 611 room allocation). The hotel could conceivably construct the remaining 79 rooms on the adjacent site, or potentially transfer the entitlement of the remaining rooms (with City approval) within the Newport Center area.

Housing Element

To be consistent with the goals, policies and programs of the General Plan Housing Element, the project is required to provide a minimum of 20% of the total units (16 units) to low and moderate income households. The applicant is proposing to enter into an agreement with the City to provide these units off-site, within the City's limits. The agreement will be reviewed and approved by the City Attorney and Planning Director and will be executed and recorded prior to the recordation of the final tract map or the issuance of a building or grading permit for the proposed project. The Planning Commission required the affordable units to be constructed and completed prior to the issuance of any certificate of occupancy for the project.

Charter Section 423 Analysis

Amendment	Area	# of Dwelling Units	A.M. Peak Hour Trips	P.M Peak Hour Trips
Pacific Republic GP2001-003	2,400 s.f. (80% of 3,000)	0	4.0 (80% of 5)	4.0 (80% of 5)
Newport Sports Museum GP2004-001	1,240 s.f.(80% of 1,550)	0	4.0 (80% of 5)	4.8 (80% of 6)
Proposed Amendment		79	39	35
Total	3,640 s.f.	79	47	43.8

As indicated in the preceding table, the project with "prior amendments" does not exceed the 100 peak hour trip, 40,000 square foot or 100 dwelling unit thresholds and a vote pursuant to Charter Section 423 is not required. Should the City Council approve the proposed amendment, it will become a "prior amendment" that will be tracked for ten years.

The proposed changes to Statistical Area L1, Block 900-Hotel Plaza and the Estimated Growth for Statistical Area L1 Table are shown as Exhibit "A" of the draft City Council Resolution (Attachment A).

Local Coastal Program Land Use Plan

The 1990 LCPLUP designates the site for Administrative, Professional, & Financial Commercial. A change in land use would result in a 4.25-acre reduction in land available to be potentially used for office uses consistent with the APF designation. However, within the Newport Center, there is approximately 200 acres designated APF and the two percent (2%) reduction proposed by the project is not a significant reduction.

The City is in the process of adopting a new Coastal Land Use Plan. The proposed CLUP tentatively scheduled for City Council consideration on December 13, 2005, has the site designated for Visitor-Serving Commercial (CV-B) uses. This designation was applied due to the existing use of the Marriott Hotel complex. The change in land use designation from CV-B to RM-C (Medium Density Residential C) is necessary for implementation of the proposed residential development and would reduce the land available for visitor-serving commercial uses by 4.25 acres. Although a reduction in area occurs, the opportunity to construct the remaining hotel room entitlement of 79 rooms would not be lost and it could be constructed nearby within the portion of Newport Center that is located within the Coastal Zone. The property is not located in close proximity to coastal resources, coastal recreational uses or the water and the project would not impact the adjacent visitor-serving uses other than to eliminate the accessory tennis courts, which is not a coastal dependent recreational activity.

Planned Community District

The applicant desires approval of a Code Amendment to change the zoning designation of the subject property from Administrative, Professional & Financial to Planned Community (PC) District.

The Zoning Code requires that PC's be a minimum of 10 acres to ensure that the project would take advantage of the superior environment provided through coordination of parcels that can result from large-scale community planning, would allow diversification of land uses and would include various types of land uses. A waiver is sought because the property is 4.25 acres in size. The proposed PC District does not strictly meet the intent and purposes for a PC adoption as the project is a single use less than 10 acres. Although when considering it in the larger context of the Newport Center area that includes a mixture of shopping, hotels, commercial support uses, professional offices, and residential developments, the proposed PC allows the site to be developed with flexibility to allow the project to integrate within Newport Center to create a superior environment.

Proposed Development Standards

Density	79 units (18.59 units per gross acre)
FAR	1.90
Building Height	65 feet maximum
Building Front Setback	15 feet minimum (varies)
Building Side Setback	7 feet minimum (varies)
Rear Setback	13 feet minimum (varies)
Parking	2 spaces per unit for resident and 0.5 space for guest

The proposed draft Planned Community text for the proposed development is shown as Exhibit "A" of the draft Ordinance (Attachment B).

Parcel and Tract Maps

The applicant requests an approval of a parcel map to divide the 4.25-acre project site from the Marriott hotel complex for financing and development purposes. Lot No. 1 is 4.25 acres in size to be devoted for the proposed residential project and Lot No. 2 contains the remaining 9.54 acres to continue to be occupied by the Newport Beach Marriott Hotel. The subsequent Tract Map is proposed for condominium ownership of the 79 unit project. The required findings for the proposed maps have been met in accordance to the City Subdivision Code.

Traffic Study

A traffic study has been prepared for the project pursuant to the TPO and its implementing guidelines (Appendix D of the Mitigated Negative Declaration), CEQA analysis for cumulative projects and intersection capacity utilization (ICU), and General Plan analysis. The project will result in a net increase of 330 new average daily trips, 42 vehicle trips during morning (AM) peak hour and 39 vehicle trips during the afternoon (PM) peak hour. Fourteen (14) intersections were identified by the Traffic Engineer for inclusion in the study. The TPO analysis resulted in nine (9) out of fourteen (14) study intersections that exceed the one-percent threshold. ICU analysis was performed on these intersections and found that the project related traffic does not cause an unsatisfactory level of service at any of these

intersections and no significant impact occurs and no improvements are required at these intersections. The 9 intersections will operate at LOS D or better during peak hours.

Coastal Residential Development Permit (CRDP)

A Coastal Residential Development Permit is required when a project proposes to create 10 or more new residential units within the Coastal Zone. Affordable housing is required to be provided on-site if it is determined feasible to do so. The Planning Commission found that including the affordable units within the project was not feasible. Consistent with the previous Housing Element discussion, affordable units will be provided off-site within the City.

Environmental Review

A Mitigated Negative Declaration (MND) has been prepared for the proposed project in accordance with the implementing guidelines of the California Environmental Quality Act (CEQA). The document was initially prepared to evaluate the project with traditional zoning of Multiple-Family Residential, followed by a 30-day review period from July 15 to August 15, 2005.

Since then, it was determined that the most suitable zoning designation for the property would be PC (Planned Community). This new zoning designation does not affect the size, scope or design of the project that would potentially create additional physical environmental impacts, and therefore, does not require additional recirculation and review of the MND. An addendum has been prepared to address the change in the zoning designation including two additional mitigation measures (3.3.N and 3.3.O), required by the Planning Commission, to address the traffic and air quality impacts pertaining to exporting of materials from the subject property to the dump site. They have been attached to the MND for the City Council to consider.

Public Notice

Notice of this hearing was published in the Daily Pilot, mailed to property owners within 300 feet of the property and posted at the site a minimum of 10 days in advance of this hearing consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the city website.

Prepared by:


Rosalinh M. Ung
Associate Planner

Submitted by:


Patricia L. Temple
Planning Director

- Attachments:
- A. Draft City Council Resolution
 - B. Draft City Council Ordinance
 - C. Draft Planning Commission Resolution No. 1681 (Without exhibits)

- D. Excerpt of the draft minutes from the November 3rd, 2005, Planning Commission meeting
- E. Planning Commission Staff Report from the November 3rd, 2005 (Without attachments)
- F. Mitigated Negative Declaration & Initial Study (Errata, Response to Public Comments & Mitigation & Monitoring Program attached)¹
- G. Project Plans¹

¹ Distributed separately due to bulk. Available for public review at the City Clerk's Office.



**DRAFT INITIAL STUDY and
MITIGATED NEGATIVE DECLARATION
for the proposed
SANTA BARBARA CONDOMINIUMS PROJECT**

Prepared for:
City of Newport Beach
Planning Department
3300 Newport Boulevard
Newport Beach, CA 92663
Rosalinh M. Ung, Associated Planner
(949) 644-3208

Prepared by:
David Evans and Associates, Inc.
9635 Granite Ridge Drive, Suite 300
San Diego, CA 92123
Dustin Fuller, Project Manager
(858) 614-4360

Draft: July 15, 2005

a zoning designation of APF and the proposed LCP would designate the site as Commercial/Visitor Serving (CV) to better reflect the existing land use (Hotel). The proposed Project would require an amendment to the existing LCP/LUP to change the current land use designation from APF to MFR or an amendment to the proposed LCP to change the proposed land use designation from CV to MFR, should that plan be certified by the California Coastal Commission.

(Sources: Newport Beach General Plan, Aerial Photograph, Newport Beach LCP, Newport Beach Draft LCP, and Site Survey)

A. Would the Project physically divide an established community?

No Impact. The proposed Project site encompasses approximately 4.25 acres located along Santa Barbara Drive currently developed as tennis courts. The proposed Project involves development of a multi-family residential area with open space and recreational areas. Currently there is a multi-family residential development located northeast of the site across Santa Barbara Drive. The proposed Project would not extend into or through this development. Additionally, the other surrounding land uses, including commercial uses, would not be affected or divided by the proposed residential development. The proposed Project would not divide an established community.

(Sources: Newport Beach General Plan, Project Plans, and Site Survey)

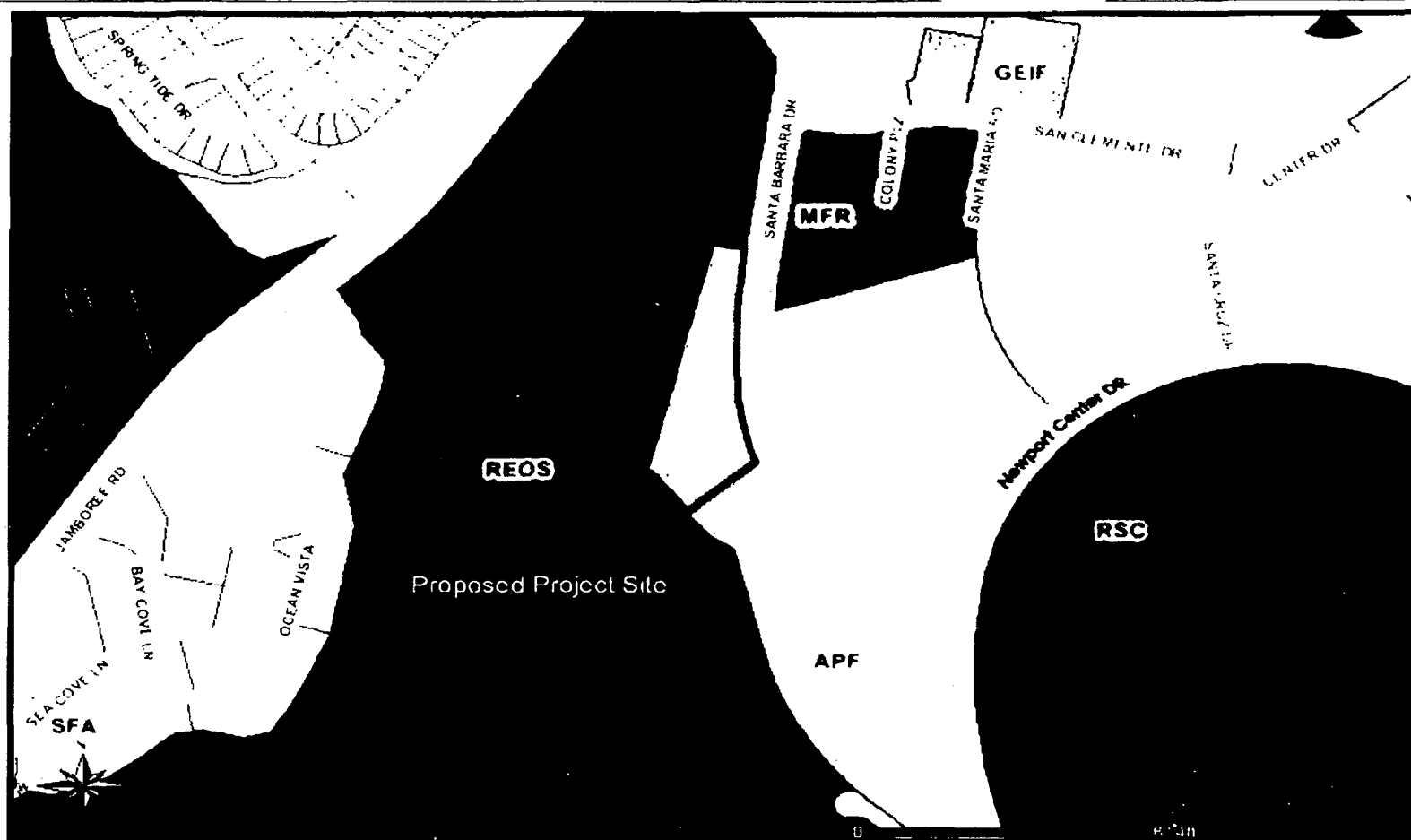
B. Would the Project conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the Project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?

Less than Significant Impact. The proposed Project would involve a general plan amendment, LCP and zone change to alter the land use allowed on the proposed Project site. The current General Plan land use designation on the proposed Project site is Administrative, Professional, Financial (APF). The general plan amendment would change it to Multi-Family Residential (MFR). According to the Land Use Element of the General Plan, this land use category has been applied where multiple dwelling units are allowed on a single subdivided lot. Smaller condominiums and other individually owned attached housing projects are also given this designation. Further, this category allows for either single ownership or condominium development.

The change in land use designation from APF to MFR to accommodate the proposed development would not be in conflict with the Newport Beach General Plan because the site would be developed in accordance with the Development Policies of the Land Use Element of the General Plan. The proposed Project would be consistent with Policy A, as it encourages a diversity of land uses so that schools, employment, recreation areas, public facilities, churches, and neighborhood shopping centers are in close proximity to each resident of the community. Additionally, the proposed Project would be consistent with Policy D as it doesn't block public views and with Policy I as it is not located within a flood hazard area. The proposed residential development within the Newport Center area serves to implement these policies.

Project Site _____
Block 900 _____

Figure
3-2



Source: City of Newport Beach

Santa Barbara Condominiums Project Land Use Policy Map

Figure
3-3

Additionally, the proposed Project would be compatible with other nearby residential land uses. A less than significant impact to the Newport Beach General Plan is anticipated with development of the proposed Project.

The proposed Project would also require a zone change from APF to MFR in order to be consistent with the proposed General Plan designation. However, as discussed above, the proposed Project would help promote Policy A of the City's General Plan and would be compatible with the residential zones to the south and northeast of the site. A less than significant impact to the zoning code is anticipated with development of the proposed Project.

The proposed Project site is within the designated coastal zone, which requires a Coastal Development Permit (CDP). As previously discussed, within the existing LCP/LUP, the subject property has a zoning designation of APF and the proposed LCP would designate the site as Commercial/Visitor Serving (CV). The proposed Project would require an amendment to the existing LCP/LUP to change the current land use designation from APF to MFR and an amendment to the proposed LCP to change the proposed land use designation from CV to MFR. This change in land use designation would lead to the loss of 4.25-acres of land available for office or visitor serving commercial uses. **With regard to CV and uses, the Block 900 - Hotel Plaza in the General Plan Land Use Element is allocated the development of 611 hotel rooms. The existing Marriott Hotel currently has 532 rooms (79 rooms below the total 611 room allocation). The hotel could conceivably construct the remaining 79 rooms in the future on the adjacent hotel site, or potentially transfer the entitlement of the remaining 79 rooms (with City approval) within the Newport Center area. Thus, the loss of CV acreage would not eliminate the ability to develop additional visitor serving commercial uses.**

Similarly, the change in land use would result in a 4.25-acre reduction in land available to be potentially used for office uses consistent with the APF designation. Within Statistical Area L-1 (Newport Center), there is approximately 200 acres designated APF and the 2% reduction proposed by the Project is not a significant reduction, and therefore, a less than significant impact would result.

As the proposed Project would not affect environmentally sensitive habitat areas, shore-line access given the location of the site, water or marine resources, or coastal visitor-serving facilities, it is not anticipated that the requested zone change to the existing LCP/LUP or the proposed LCP would create significant impacts to this land use plan. Additionally, the proposed Project would be compatible with the residential zones to the south and northeast of the site.

Setback requirements for the proposed Project area are governed by the City's Municipal Code. The requirements for the site are outlined in Table 3-7, *Project Setback Requirements*, below.

TABLE 3-7 PROJECT SETBACK REQUIREMENTS			
Newport Beach Municipal Code	Front Setback (ft.)	Side Setback (ft.)	Rear Setback (ft.)
Multi-Family Residential	20	4	10
Santa Barbara Condos			
Residential Development	15	5	10

Source: City of Newport Beach Municipal Code and Santa Barbara Condominiums Site Plan

Based on these requirements, the proposed Project would not meet the required setback for front yards. The proposed Project would require a Modification Permit to deviate from this setback requirement. The majority of the proposed Project would exceed the front setback requirement;

however, several portions of the buildings are approximately 17 feet from property lines. Those portions encroaching within the 20-foot setback requirements include either architectural features or balconies/patios that are not habitable/living spaces. The reduced front setbacks, therefore, would not result in significant environmental impacts.

As previously stated, the Block 900 – Hotel Plaza area is permitted to have 67 residential units. The proposed Project would add an additional 79 units to this area. The proposed MFR designation allows up to 36 dwelling units per acre. Based on the acreage of the proposed Project site (4.25 acres) the maximum allowed number of dwelling units would be 153. However, the Project is proposing a total of 79 dwelling units or 15.3 dwelling units per acre, well below the maximum allowable density under the MFR land use designation. Therefore no significant impact would result from the proposed Project. As the proposed Project site is located in Statistical Area L1, the number of residential units would be increased from 67 to 146 (67 + 79).

(Sources: Newport Beach General Plan, Project Plans, and Newport Beach City Zoning Code)

C. Would the Project conflict with any applicable habitat conservation plan or natural community conservation plan?

No Impact. As discussed in Section 3.4, Biological Resources above, the County of Orange has prepared the Central-Coastal Orange County NCCP. However, the proposed Project site is not included within the boundaries of this plan and would, therefore, not conflict with this plan. No impacts to a habitat conservation plan or natural community conservation plan would occur.

(Sources: Site Survey, and Newport Beach General Plan, Central-Coastal Orange County NCCP)

3.10 MINERAL RESOURCES

According to the Conservation of Natural Resources Element of the City of Newport General Plan, oil deposits represent the only significant extractable mineral resources in the Newport Beach planning area. Oil companies are currently operating oil extraction wells in the unincorporated "County Island", located in the West Newport area. Since the State Shell-Cunningham Act of 1955 prohibits oil extraction on all State tide and submerged lands from the northerly City limits of Newport Beach to the Mexican Border, the County Island is the only location in the area where oil extraction activities are allowed. There are no mining activities within the City or on the proposed Project site. No oil fields or oil wells are present in or near the proposed Project area and the proposed Project site and adjacent areas are not subject to oil, gas, or mining operations.

(Sources: Newport Beach General Plan, USGS Laguna Beach Quadrangle and Site Survey)

A. Would the Project result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?

No Impact. The proposed Project site is not located in an area where known mineral resources are present. Future development on the site would not affect regionally significant mineral resources since there are no known resources on the site. The proposed Project site is also not identified in the Newport Beach General Plan as a mineral resource area.

(Sources: Newport Beach General Plan and USGS Laguna Beach Quadrangle)

CITY OF NEWPORT BEACH**Planning Commission Minutes**

November 3, 2005

Regular Meeting - 6:30 p.m.

		INDEX
ROLL CALL Commissioners Eaton, Hawkins, Cole, Toerge, Tucker, McDaniel and Henn Commissioner Tucker was recused and appeared on the dais at 9:00 p.m.		
STAFF PRESENT: Patricia L. Temple, Planning Director Aaron C. Harp, Assistant City Attorney Rich Edmonston, Transportation and Development Services Manager James Campbell, Senior Planner Rosalinh Ung, Associate Planner Ginger Varin, Planning Commission Executive Secretary Larry Lawrence, contract planning consultant David Lepo, contract planning consultant		
PUBLIC COMMENTS: None		PUBLIC COMMENTS
POSTING OF THE AGENDA: The Planning Commission Agenda was posted on October 28, 2005.		POSTING OF THE AGENDA
CONSENT CALENDAR		
SUBJECT: MINUTES of the regular meeting of October 20, 2005. Motion was made by Commissioner Cole to approve the minutes as amended.		ITEM NO. 1 Minutes Approved
Ayes: Noes: Absent: Abstain:	Eaton, Hawkins, Cole, Toerge, McDaniel and Henn None Tucker None	
HEARING ITEMS		
SUBJECT: Bayside Residential Planned Community (PA2004-072) 919 Bayside Drive		ITEM NO. 2 PA2004-072
The project involves the redevelopment of the Newport Marina Apartment complex located at 919 Bayside Drive. The existing 64-unit apartment complex, located on approximately 3.92 acres, will be demolished and replaced with a 17-unit, gated		Recommended for Approval

residential community. The tentative tract map proposes to establish 17 individual residential lots for custom home construction, 1 common recreational lot with possibly a pool and shade structure, 2 landscape/open space lots. Private streets are proposed. A request to re-zone the site from MFR (Multi-Family Residential) to PC (Planned Community) is sought, which is accompanied with Planned Community Development Plan text that will establish development and use standards for the proposed project.

A Coastal Residential Development Permit is required to ensure compliance with the Government Code Section 65590 (Mello Act) and the Housing Element of the General Plan. The project includes the demolition of existing structures, grading, installation of utilities, private streets, landscaping, site lighting, site walls, storm water improvements, public access easements and upgrades to the public right of way adjacent to the project site.

David Lepo of Hogle Ireland, contract planner, gave an overview of the staff report noting that this item was first heard in August. During that hearing, the Planning Commission raised several issues and asked staff for a review. One of the issues concerned the subdivision of water surface in the bay. The City Attorney advised staff that those properties that were on the surface of the water included originally in the Subdivision Map could not be included in the Map and could not be subdivided, and were to be taken out of the area that was ultimately included in the Tentative Tract Map. As a result of that determination, the land area and the water area were reduced to the point that the Development Overlay that had been proposed for this particular property reduced the lot area for the development to comply with the maximum 40% lot area coverage that applies in the Planned Residential Development Overlay Zone. The underlying land use designation is multi-family residential and the overlay was going to be applied to the zoning to allow for the development of single family homes. With that determination, and absent the Planned Residential Development Overlay, staff concluded the best procedure was to prepare a Planned Community Text and change the zoning on that particular site to Planned Community, leaving the underlying land use designation in the General Plan as multi-family residential. Therefore, we are here tonight with a proposed Planned Community Text and a proposed Zoning Amendment to change the land use designation to Planned Community. With that the Planned Residential Development Overlay goes away as does the Use Permit that was required for development pursuant to the Planned Residential District.

Continuing, he noted:

- The Planned Community text includes development standards and conditions of approval that address the issues raised at the last meeting. Those issues are:
- Land Use designation and zoning of multiple family - the concern was that there might be an attempt to develop more than one unit on each of the residential lots being created by the Tentative Tract Map.
- Concern with the MFR zoning - somebody might try to develop three stories and up to 35 feet in height. Staff has included a development code section in the PC text and conditions of approval in the PC text that clearly state one unit for each of the residential lots not to exceed 28 feet in height.
- Concern that setback between the new property line wall at Bayside Drive was not adequate. Staff has included conditions and standards in the PC text that require a minimum of four foot setback between the right-of-way at Bayside Drive

and the new property line wall that would allow for a minimum of 4 feet for landscape area then the wall and then 10 feet of yard on the private property side of the Bayside wall. The right-of-way beyond the sidewalk on the private property side of Bayside Drive varies from 1-2 feet to 6 feet, so the affect will be that there will be between 5 1/2 and 10 feet of actual landscape setback between the back of the sidewalk at Bayside and the new property line wall.

- Concern with the setback of the private driveway serving all the residences. Staff has proposed that where there is a single story element adjacent to the driveway, a minimum setback of 5 feet be provided; where there is a two-story element, a 10 foot setback be provided. That is included in the development standards of the PC Text.
- Concern with sidewalks adjacent to the private street within the tract. Staff has determined that since this is a private, gated community, the sidewalks would not be necessary. Conditions are included in the PC text.
- Other conditions of approval deal with access to the water and easements across the floating dockway.
- Landscaping was a consideration, particularly the piece of property that adjoins this site on the n/w corner of Bayside that does not belong to the property owner, it belongs to the City. The decision was the Planning Director shall have the right to approve a landscape plan for this property including having the Homeowners Association maintain that property. This is included in the conditions of approval in the PC text.
- Concern of noise and noxious effects from the boat yard across the channel have been addressed in the provision that requires the applicant to submit a form to be provided to the lessee of the lot informing them of those concerns.
- There will be no dedication of lots F and G on the surface of the water to the City.
- Design amenities that the applicant has asked be included are indicated in the staff report and deal with fences, hedges, walls, arbors, trellises, fire places and barbecues.
- The action asked for tonight is for approval of the Negative Declaration with revised copies of the first two pages (distributed) resulting in reference to the Planned Residential Development rather than the PC text; the Tentative Tract Map, the Code Amendment changing the zoning of the site to PC Planned Community and adopting a Planned Community Text; a Coastal Residential Development; no traffic analysis will be required as this resulting project will have less traffic impact to this site.

Commissioner Cole asked why should the Planning Commission consider the waiver for this site.

Mr. Lepo answered that the Planned Community text allows for a mix of uses within the site. It allows the City to make certain that those different uses are compatible with one another in this development. This site is to be re-developed with single family homes to replace an apartment building and the use of the PC text is to make sure it is integrated with what is there now including the condos to the east, single family homes

to the west, and the commercial across the street. You have the opportunity to use the PC text to make sure that the access to the waterfront is maintained and enhanced with some of the conditions of approval. He then noted other areas where a similar process has occurred.

Commissioner Hawkins asked what the smallest parcel is that the PC text has been applied to?

Mr. Campbell noted the smallest size was 4 acres and this is 3.92 acres.

Commissioner Hawkins asked about the analyses of the land use impacts of the project within the Mitigated Negative Declaration and are the changes reflected in the revision handouts? The project as proposed now will have impacts due to the change in the zoning going from multi-family to Planned Community, is there an analysis of that?

Mr. Lepo answered the physical changes associated with this development were analyzed as well as consistency with plans. We have noted that the underlying General Plan Land Use designation of multi-family does include single family uses as are proposed here. Therefore, this plan is consistent with the General Plan and the PC text does allow development of single family homes. As far as policy document and plan documents, it is consistent with that change in the front. Physical impacts associated with physical changes are no different than what was analyzed.

Commissioner Hawkins asked about the change in the Project concerning the PC district and how those changes were or were not reflected in the Mitigated Negative Declaration for the Project.

Mr. Lepo noted this can be adjusted for technical accuracy.

Mr. Campbell noted:

- The land use section mentions the PRD Overlay in the initial study and we can make the change to agree with the project description. Referencing a handout, he continued.
- The marina was permitted in 1973 as a commercial marina with parking.
- Subsequent addition to the apartments in the early '70's eliminated that parking and the City conditioned the Parcel Map that created those additional units such that the marina would only be used by the Upland properties (project site, Cove Condominiums and the Shark Island yacht club).
- If this was to be continued as a commercial marina, parking would have to be provided.
- The original draft conditions maintained that this marina would be operated only by those Upland properties.
- Staff has changed their position on this matter and with the applicant's approval, we are requiring that the slips in front of this project site be used only for the residents of this project and discontinue the policy of sharing with the other two properties. Change to the condition has been made to specifically require that as reflected in amended condition 22. This restriction is to be noted on the map and

in the CC and R's and in the Planned Community Text.

- Public access - The PC text in condition 34 requires the applicant to execute an agreement that ensures public access as identified be maintained permanently as well as an irrevocable offer to dedicate a public access easement. This dedication will be on the property that they actually control as the existing walkway is on property owned by the Irvine Company. If the access is eliminated in the future because it is now on somebody else's property, we would then have this offer to dedicate and the easement that could be moved landward of the Irvine Company property onto the applicant's property. Should the access across the Irvine Company submerged land be eliminated, then we could require it to be relocated six feet closer to the bulkhead creating a new floating walkway at that location and then ensure that access across the docks is still maintained. This offer of dedication will be required prior to the issuance of a building permit and prior to recordation of the map.
- The applicant is required to obtain a new Harbor Permit. The historic transfers of this particular permit has been discontinuance or 'murky'. So, we want to clean this up with a new permit in the applicant's name which then would be transferred to the Homeowner's Association upon its creation so that the Homeowner's Association controls the Harbor Permit and then the rights to use the docks would be transferred with the sale of the individual leaseholds. The residents will be the only ones able to use those slips and therefore it will be a private marina.
- He then noted condition 10 has a changed reference to the improvements on the docks.
- Condition 12 has a reference as to who owns those improvements as requested by the applicant.

At Commission inquiry, Mr. Campbell noted the term 'landward' shows direction. There are 18 feet between the bulkhead line and the actual physical bulkhead that is water and the submerged land is owned by the underlying owner and is under the control of the applicant. What this does is repositions that walkway onto the land that the applicant and the property owner control. If The Irvine Company decides that in the future the docks can not be tied into the submerged land, which we don't expect to happen, then the applicant would be required to move the floating walkway six feet closer to the bulkhead to be used for public access.

Chairperson Toerge noted that the map shows an existing bulkhead at the property line. If the floating walkway was moved 'landward', it would be on the land.

Mr. Campbell explained the tract boundary runs along the bulkhead because staff did not want to subdivide those submerged lands and make them part of leasehold of some of these lots. He then discussed the boundaries.

Mr. Aaron Harp noted that on the map it is referred to in two ways. It is referred to as the US Bulkhead line and next to that a notation referencing existing bulkhead line, which runs along side where the floating walkway is now.

Mr. Campbell noted a change will be made to clarify as the intent refers to the US Bulkhead line. Discussion continued.

Mr. Harp noted the reason for this condition is to resolve the issue of the fact that the walkway is currently not on the proponent's property, it is on a third party's who has the rights. This offer is done in case of the loss of the right to have it on the third party property, then they could shift it over.

Commissioner Eaton asked about the enhancements to the existing walkway and if those are covered; precedence for free-standing fireplaces.

Mr. Lepo noted if those are the improvements that are required, then that plan would have to be reviewed and any changes to conditions will be made.

Mr. Campbell noted the free-standing fireplaces issue would require a Modification Permit in most cases because a fireplace would be higher than three and a half feet. The Zoning Administrator could not come up with any current permitted free standing fireplaces in bulkhead locations. Free-standing barbecues have been done, but not 8 foot high chimneys.

Commissioner Hawkins noted the slip provision and the walkway provision is problematic and presented a scenario. He suggested that there is a better way to do this in the conditions such as requiring the applicant to go ahead and get that easement over the existing walkway so that you don't have this potential problem.

Mr. Harp answered that if the Irvine Company revoked the right to have the walkway, they would probably also revoke the right to have the slips. The main intent of the condition is to ensure that the public has access to walk along, not so much as to access the slips. Typically, we don't make a condition where a third party approval is necessary. A condition could be edited that the offer to dedicate, or obtain, easements thereby giving the option of one or the other, that way you are not conditioning it on a third party.

Continuing, Commissioner Hawkins asked what sort of agreement is there now for the shared use of the slips. Is there a written agreement?

Mr. Campbell answered that there is not necessarily an agreement but the City in the '70's as a condition of the Parcel Map that is underlying this piece of property arranged that be done. So, we are requiring it to be that way. Staff does not know if there is a private agreement between the entities. The adjacent Cove Condominium has a very similar provision with its Tract Map that the Coves and the Yacht Club get to use what is front of them as a shared arrangement. That was required of that development in 1972. When they added on to this project, they took away the parking that was planned for the commercial marina so they recognized there was not parking. They again extended the same kind of shared relationship that was started with the first two properties (Coves and Shark Island Yacht Club) to encompass all three properties because there is one Harbor Permittee which is The Irvine Company at the time; that was the arrangement of the City.

Mr. Harp noted he concurs with the analysis.

Carol McDermott of Government Solutions, representing the applicant, noted the following contained within a PowerPoint presentation:

- An aerial of the project site depicting the property line as mapping the land ownership; however, the area controlled goes out 18 feet seaward of the existing

bulkhead. The US bulkhead is seaward 18 feet of the existing bulkhead. This control was granted to the applicant through a Grant Deed from The Irvine Company. The submerged land portion is not subdivided and that is why the property line is shown on the land portion of the site and not out 18 feet.

- The project consists of replacing the existing apartments with custom home lots and the bayfront public walkway. We are ensuring that public access is provided and enhanced.
- In the event that this were to be removed and the walkway was moved, then it would allow for some additional water area that would allow for slips of a slightly different configuration. That would have to go through the City and the Coastal Commission in order to occur. We understand that.
- It has been confirmed that the triangular piece of land at the end of the walkway is owned by the applicant. The walkway will be straightened out allowing for landscaping and a sign that enhances the availability of the public walkway. It will also provide for ADA access.
- The existing walkway will be enhanced by the remounting of lighting along the existing handrails and the removal of the cleats that allow for the side ties. We will construct an additional hand rail so there will be handrails on both sides with a clear access of 6 feet along with the handicap access ramps.
- She noted a submitted letter indicating the dock walkway meeting the intent and requirements of the Coastal Act, the Subdivision Map Act, the California Constitution as well as the City's Local Coastal Plan.
- Two exhibits showing grade elevations of the proposed homes on the Promontory Bay Front and the North Bay Front facing Balboa Island were discussed.
- An exhibit showing the vehicular turning areas on lots 9 and 15 was discussed.
- A Harbor Permit requires the boat slips to be operated as a residential marina and restricted to these lots. We accept that condition and understand it. The Permit will be transferred to the Homeowners' Association with the provision of maintenance and permanent public access.
- The site plan depicting the gating at the entrance with public access along the entire site was discussed.

Commissioner Eaton noted the concern of more open space between Bayside Drive and the homes to be outside of the walls as opposed to behind the walls. If the Commission agrees to have 10 feet outside the wall and allow a 5 foot setback behind the wall, would that be agreeable?

Ms. McDermott answered that they had agreed to a 10 foot setback behind the wall, as the Commission had determined at the last meeting, and also we would have a minimum of 4 feet along the street. We have found out subsequently that where we had assumed the property line was immediately behind the existing sidewalk on Bayside we found that the City's property line varied and we had between 2 and 6 feet behind the sidewalk before the property line. What we discussed with staff is that we would have an agreement that would allow us to landscape the City's property in

conjunction with our property and add 4 feet to that. It would result in between 2 and 6 feet of existing area that can be landscaped adding 4 feet to that so it would be between 6 and 10 feet of landscape area along that frontage. Allowing the 10 foot setback for the property owner would set the homes further away from Bayside Drive and that is what we would prefer.

Chairperson Toerge asked about the heights of the pads and if the conditions are consistent with those.

Ms. McDermott answered the text in the PC refers to these conditions. She noted that the language describes the existing conditions so that they would be replicated with the new development. She offered to clarify the language if it would be helpful.

Mr. Campbell noted the Tentative Maps show pad elevations and they are within tenths of the existing elevations. The interior pad elevations are not included. Referring to item 9 on handwritten page 30, it was decided that this language will be re-worked to include the existing conditions and the interior lot pad elevations.

Commissioner Cole asked about the landscape on the parkway on Bayside Drive.

Mr. Campbell noted that we will add a provision about the landscape in the conditions.

Commissioner Henn asked about the floating walkway and the docks. Is the homeowner's association responsible for the maintenance of the walkway and the docks?

Ms. McDermott answered that is correct.

Commissioner Henn noted that if The Irvine Company decides there can not be a walkway over their property I clearly understand the concept of moving the walkway in 6 feet, but, doesn't that raise perhaps an untenable burden on the homeowner's association to have to move the walkway and the docks because they are responsible for the maintenance of the docks and the walkway? It seems the solution as proposed does not make sense and I would propose to add an 'or' to that the applicant would seek to get an easement from The Irvine Company to maintain the current positioning of the walkway and the docks.

Ms. McDermott noted this could be a burden on the homeowners association. The issue is we have various documents that have given us the right to this. We think the chance of losing that right from The Irvine Company because of the way they have granted those rights, is minimal. However, the City wanted a fail safe and as a result of that we felt we could live with the condition as it was written. To the extent we are going to re-do the Harbor Permit and possible relocation of docks would be done as separate action.

Mr. Harp noted they have a significant argument that they have the right to maintain the walkway as is. What we were looking for was a condition that basically the City does not have to be involved with rights issues.

Commissioner Henn noted that if their rights do seem to be substantially, but perhaps not absolutely defined, it seems reasonably like it wouldn't be a big leap for the easement to be granted.

Mr. Harp answered that it may have been the intent for The Irvine Company to give up the rights to it so it may not be difficult for them to obtain the easement but there is that restriction as far as posing obligations where a third party needs to consent to it and that is why we didn't leave it as just an easement alone.

Commissioner Hawkins, referring to condition 12, asked who will own those improvements?

Ms. McDermott noted their request was to add language, 'leased or owned' because of the ownership condition and lessee condition.

Mr. Campbell noted we can use the language that is suggested.

Commissioner Hawkins noted he was in favor of that as some of the utilities can be owned by separate companies. He wants it to be clear that the ownership is not the City as the lease is held by the HOA and there will be no liability to the City.

Chairperson Toerge noted his notes from the last meeting (with a straw vote) show the floating access was to be widened concurrent with an offer of dedication of land as a means of compromise. He asked why there wasn't a dedication of land and the proposal is for 6 feet widening.

Ms. McDermott noted that the width of the dock was based on the Coastal Commission preference that structures not be added to increase the shadow that goes over the water which would effect the life of the plant material and/or the setting of the wildlife that lives in the water. Our thought was that if we could effectively increase it by removing the obstructions that perhaps that met the intent of what the Commission was looking for. So, we added to the safety and to the width without actually widening the dock, which would then necessitate a separate Coastal Development Permit for both the Harbor Resources and the Coastal Commission. It was our proposal in the hopes that would meet with what you were asking for, but it clearly did not increase the physical reasons for those reasons.

Continuing, she noted that she did not understand that the straw vote indicated a strong support for a dedication of land. When we worked with staff and the City Attorney's office there was a sense that provided we strengthen the access, that maybe that met the intent of what the Commission was saying. Perhaps you need to seek that clarification, but that is the way I read it.

Commissioner McDaniel noted the condition referring to minimal lighting. His recollection about the discussion on the widening would be to have some lighting so that it would be useable as opposed to just security.

Ms. McDermott answered that the intent was to make it so minimal as to be both safe and attractive at night time. It is such the people along Balboa Island facing our property, or people who live in proximity on our side, don't want a lot of lights down there. The intent was to place them on the dock railing in such a way that they would be out of the way from a walking standpoint but provide the appropriate amount of light. It is clearly the intent to make it safe and appropriate for those purposes. We can work with staff to make sure that happens.

Public comment was opened.

Public comment was closed.

Chairperson Toerge then identified key topics for purposes of organizing the discussion:

1. lateral access - land or floating
2. setbacks
3. landscape plan and architectural guidelines
4. turn-around designs for lots 9, 15 and 3
5. include in the PC Development Regulations the disposition of Lot A
6. pad elevations
7. FAR and how to calculate
8. improvements allowed in the setback areas
9. condition 4 regarding drainage on the property

Commissioner Hawkins noted:

1. Lighting study that is approved by the City.
2. Ownership or lease verbiage in condition 12.

Chairperson Toerge addressed the first issue, lateral access:

- The issue of lateral access is whether it is provided on land or on the floating access and whether the floating access is adequate and meets the requirements of the Coastal Act. He then cited from the Coastal Commission summary of staff report Chapter 3, 43.3.1.1-11. *Require a direct dedication or an Offer to Dedicate an easement for lateral public access for all new shorefront development causing or contributing to adverse public access impacts. Such dedication or easement shall extend from the limits of public ownership (e.g. mean high tide line) landward to a fixed point seaward of the primary extent of development (e.g. intersection of sand with toe or top of revetment, vertical face of seawall, dripline of deck, or toe of bluff).* This tells me the access has to be on land, regardless of what other people have suggested. He then discussed the possibility of redevelopment of the subject and adjacent properties. He disagreed with the applicant's assertion that there is a remote chance that the Cove condominium development would ever be redeveloped. He countered that the Cove Condominium development will certainly be redeveloped at some point in the future because 'ever' is a long time. He pointed out that just 10 short years ago the thought that the subject project, which contemplates the demolition of 65 high end rental units to be replaced with 17 custom home sites, was at that time considered infeasible. Who is to say when the Coves and the Newport beach Yacht Club will be redeveloped, enabling a continuous land based bay front walkway from Bayside Drive to the Marine Avenue bridge? He then referenced an exhibit depicting the lateral coastal access easements throughout the City, sever of which currently end in dead ends, but one day will connect to one another. This body is responsible for planning and

this chairman is attempting to do that with this by requiring this easement across the land enabling it to connect with other land based bay front easements that will be developed in the future. Staff then showed the exhibit that was explained and discussed. In conclusion, he noted it is the Commission's responsibility for the benefit of the community to follow the Code and to maintain this lateral access on the land despite for it's potential in the short term, to look somewhat disjointed. There are some people who don't want to walk down a ramp to use the access. (he gave examples). His objection to the floating access is that it is not consistent with our charge to uphold the requirements of the Coastal Act as they apply to new development. As I recall the straw vote taken last time, the Commission voted for 10 feet in width and an offer of dedication on the land so that some point in time when future land access was available it could be built on the land.

Commissioner Henn noted his recollection of the straw vote did not include a requirement for a conditional dedication on the land for the walkway, but perhaps staff can verify that one way or the other.

Mr. Harp noted it may be best to take another straw vote on this issue.

Continuing, Commissioner Henn noted that the floating walkway is a superior solution to the location of a walkway on the land. If the walkway is located on the land with a dead end at the far end, there will still be a ramp. The language in the Local Coastal Plan may or may not be the same language. I am sure there will be a sentiment for a long time that we preserve and enhance public access to the shoreline and I agree to that. As to the specific language that interprets that thought, that may change over time. For all of those reasons I am less concerned that the walkway be located or provided for a dedication on land.

Commissioner McDaniel noted as a member of the Local Coastal Committee he is quite aware of how much they have gone through to have access available to water for everyone here in Newport Beach. I am happy that we have the access so long as it is well lit, the fact that it is no longer 10 feet wide, I can accept that. I just want it wide enough so that everyone can use it and enjoy that aspect. Whether it floats, landward or seaward, I don't care, it is access and adequate to me. I am happy with the way it is.

Commissioner Cole noted his concurrence with comments of Commissioner McDaniel. This project provides significant access both vertical and lateral. The enhancements proposed are good ones and will create an attractive walkway for the community. It is a large burden to ask the applicant in effect to what would basically be a redesign of the entire plan when the alternative seems to be relatively reasonable and attractive.

Commissioner Hawkins noted the previous comments. He stated that the City's Draft Local Coastal Plan Section 3.1.1-11 requires an offer to dedicate an easement for public lateral access for all new shorefront development causing or contributing to adverse public access. What we have here is existing adequate public access that they are enhancing. I don't believe we can make those findings. I would be concerned about requiring the access on land due to the proximity of the public access immediately adjacent to a residential community. He affirmed he is in favor of the floating walkway with the enhancements.

Commissioner Eaton noted he agrees with the other Commissioners. He added that the this project will have to go in front of the Coastal Commission and if their interpretation of their language is different than our interpretation, then the applicants

will have to deal with that.

Docks and slips.

Commissioner Cole affirmed with staff that the residents of the Cove Condominium complex can not rent the slips associated with this project due to the limited availability of parking and that anyone who is currently renting slips will have to move.

Commissioner Hawkins noted his concern of the irrevocable offer to dedicate (IOD) a public access easement for a floating walkway landward. He suggested the following language to comply with the suggested changes by the City Attorney: "The applicant shall record either an irrevocable offer to dedicate a public access easement for a floating walkway landward of the bulkhead line (to be identified) or, an easement over the existing floating walkway." The alternative is important to have.

Mr. Harp noted the language will be re-worked if the Commission allows for the option of an easement in the existing condition as opposed to the irrevocable offer to dedicate.

Chairperson Toerge noted the two bulkhead lines need to be clearly identified and delineated to prevent further confusion.

Staff agreed.

Setback from Bayside.

Commissioner Eaton noted the following:

- Referring to the exhibit he stated that at one point the setback is zero at the west end and along the entirety of lot 1 on the east end it is actually 1 1/4 feet; whereas most of the project setback is 5-6 feet total.
- Frontage along Bayside is important and he wants to have at least 10 feet total between the City right-of-way and the property in front of the wall without having to require the houses to be moved further back.
- He suggested language, "Without requiring additional home setbacks that requiring at least 10 feet of landscaping be provided between the back of the sidewalk in front of the wall."

Chairperson Toerge asked about the disposition of the current City trees on site now.

Mr. Campbell answered those trees will be removed to put in the planned improvements.

Mr. Henn asked who is correct? The applicant stated that there was between 2 and 6 feet of distance between the sidewalk and the property line; or, is Commissioner Eaton correct?

Ms. Temple noted Commissioner Eaton is correct in the sense that at exactly one point the sidewalk and the property line are co-terminus and it is at the far western part of the property. For the greater portion of the property it is a minimum of 2 feet. Lot 1 easterly of the entrance appears to be 1.25 feet for that stretch.

Carol McDermott noted that 1.25 is accurate and that at the westerly end the way in which their landscaping and the property line connect with the enhancement of the landscaping where the sign will go, that point where it reaches zero is expanded into that we are going to be providing anyway. So, it is not zero at that point in effect. Our proposal is 4 feet plus the 1.25 at the easterly end and then it gets larger as it goes west resulting in a total width of 9-10 feet at some points.

Provisions of the landscape being 10 feet from the sidewalk with 5 feet setback for the homes. Following the discussion a straw vote was to approve as proposed.

Review the landscape plans and the architectural design scheme.

Following a discussion, the straw vote was to designate the Planning Director to review.

Further review of the turn-around plans for lots 9 and 15.

Ms. McDermott, referring to the exhibit, explained lot 9 at the southwesterly corner of the site configuration.

Following a discussion on the driveway lengths, turning radii, and distances it was noted that a condition is included whereby the Public Works Department will review an internal circulation and parking scheme that will be conducted by the applicant.

At Commission inquiry, Mr. Edmonston noted the reason the condition is there is to assure that the standards the City require are to be met. What is shown for the first lot, may be suitable, but the one shown for the second lot is rather contorted as it is offset from the garage door and makes the backing maneuver like an 's' curve.

Chairperson asked if the lot configuration had to change to accommodate this, would that then come back to the Planning Commission?

Mr. Campbell answered it would depend on the nature of the change. This lot could be made wider to accommodate and it could be determined to be in substantial conformance and would not need to be brought back. However, if there was a larger change to the plan, staff would make that judgment after review of the plan.

Ms. McDermott added that they will be happy to work with the Traffic Engineer in order to resolve the issue.

The Commission agreed.

Chairperson Toerge noted in the PC Development regulations for the use of lot A on handwritten page 29 does not include lot A. Should it be included in this table and designated for the use that is planned for?

Mr. Campbell answered this can be done. It is referenced on handwritten page 29 in the Statistical Analysis that refers to lot A as a common recreation area and it is described in the project description that all the lettered lots are common and are intended to accommodate common amenities and other improvements and are not developable for residences. We could do something if you want. It was determined not necessary.

Building pad elevations to be within 1/2 foot of existing grade.

The Commission was satisfied.

The floor area ratio issue.

Mr. Campbell affirmed that the floor area is calculated by deducting from the gross lot areas, the setbacks and then multiplying it times the FAR. The proposed FAR for the project is 1.75.

Commissioner Eaton noted the language was not in the PC text, which becomes the operating document.

Mr. Lepo noted it was on handwritten page 29 in footnote 2.

12-foot walls.

Mr. Campbell answered the provision is the exception to the height of fences and walls where the front wall of the house could extend perpendicular to the side property line from the front wall of the house to the side property line a maximum of 12 feet. It is an architectural feature the applicant wants to provide.

Ms. Temple added that this type of feature has become very popular with side yard entrances. The material used for these features would be R2 rated.

Fireplaces and barbecues 4 feet in setbacks from side yards and/or the bulkheads.

Commissioner Henn clarified that this also includes the ability to build a 10-foot high chimney. Staff clarified. He noted that would not be appropriate due to safety concerns.

Commissioner McDaniel noted he could not support this.

Chairperson Toerge stated this should be subject to a modification permit. To create the blanket approval here is not the appropriate maneuver.

Mr. Campbell noted that built-in barbecues are typically taller than the maximum height and are fairly common with the outdoor living spaces people are providing. It is a common modification request and are permitted more often. The fireplaces are a different matter. Staff is not comfortable with those either and feel that modification permits should be required. However, adding the low built in gas barbecues that are fairly common, staff asks that this be included as they generally do not present any problems.

Chairperson Toerge noted there is a mechanism for the fireplaces to be reviewed on their merits.

Commissioner Henn suggested that any structure above five foot would require a modification.

Mr. Campbell noted this can be established with the PC text regulation. Today's

standard could accommodate that and the typical barbecues meet that height. The fireplaces would be regulated.

Ms. Temple noted this has come up during discussion with the Councilmembers. No direction has been given to staff, but much commentary has been given to allowing barbecues up to a limit height of 5 feet.

Following a discussion on permanently installed barbecues, it was determined that fireplaces will be dealt with separately through the modifications process and up to a five foot height with a four foot setback from the property line would not. The Commission agreed.

Condition 4 - on site drainage.

The drain pipe apparent at low tide water source is undetermined. Staff offered it may be a storm drain and following a brief discussion noted that all requirements and Water Quality Control Board and NPDES regulations will be met so that no drainage will go into the bay.

Floating access completion.

Staff noted, and the applicant agreed, that there will be a condition including language with time and prior to the certificate of occupancy.

Condition 12 suggested language change.

All on-site common area improvements such as parks, docks, entry gates and entry, all on-site drainage sanitary sewer, water, and electrical systems shall be **leased or** owned, operated and maintained by the HOA.

Commissioner Hawkins noted his concern of the lighting on the floating dock and of the individual residents that may create spill/glare problems across the bay. He asked that staff come up with a condition.

Ms. Temple noted there is a condition of approval in the City's standard requirements requiring a Photometric Study to make sure that light spillage and glare are addressed.

Commissioner Hawkins noted his concern of the environmental document. He asked if the Planning Commission agreed that land use analysis will include the change for the PC text? The Commission agreed.

Ms. Temple noted staff will prepare an addendum and have it completed for Council consideration.

David Lepo noted the following changes during the Commission's discussion to be included in the motion:

- Environmental document language will be edited on pages 26 and 27.
- Changes on the handout materials: Conditions 10, 12, 22 and 34 changes will be made.

- U.S. Bulkhead line determination.
- Add/change/delete provisions where previously called for applicant to landscape and maintain the weed lot that is now part of the applicant's lot.
- Add condition requiring applicant to landscape area at Bayside Drive on lots C and D as maintained by the HOA.
- Planning Director will review landscaping and architectural design guidelines.
- Quantify condition requiring Public Works to approve the turn arounds for lots 3, 9 and 15.
- Pad elevation - language in PC text as in Tentative Tract Map.
- Provision in PC text relative to barbecues within 4 feet of property line and up to 5 feet in height. No fireplaces.
- Added condition requiring enhancements on dock in reference to the exhibit regarding timing.
- An irrevocable offer of dedication will be provided regarding the frontage area.

Motion was made by Commissioner McDaniel, using the recommended language by staff with changes proposed by the Commission, to recommend approval of Code Amendment No. 2005-007, Use Permit No. 205-026m Tract Map No. 2004-001 (TTM No. 15323) and Coastal Residential development No. 2005-001 to the City Council.

Chairperson Toerge noted that this is a quality project; however, the City has an obligation to follow the Coastal Act and given my interpretation of it, I won't be supporting the motion.

Commissioner Henn asked if we are violating the terms of the Coastal Act by going forward as proposed.

Mr. Harp answered the language is added to the plan. The focus is whether or not the new shorefront development is contributing or causing adverse public access impacts. The determination could go either way. This will go to the Coastal Commission for approval/denial and they will require what access they deem appropriate if different than City's determination. It is not a violation to proceed with this action.

Ayes:	Eaton, Cole, McDaniel, Hawkins and Henn
Noes:	Toerge
Absent:	Tucker
Abstain:	None

* * *

Following a brief intermission the Commission resumed with Commissioner Tucker taking his place.

SUBJECT: John Walter Velardo (PA2004-274)
3809 Channel Place

ITEM NO. 3
PA2004-274

Approved

Request a Variance to the maximum allowable floor area and minimum required open space for the construction of a 988 sq. ft. residence on a 1,034 sq. ft. lot. The application also requests a Modification Permit to allow the proposed residence to encroach within the front, side and rear setbacks.

Mr. Campbell gave an overview of the staff report noting that the property is presently developed with a two-car garage and the applicant wishes to construct a 2-story residence with a 2-car garage on the ground floor and it will be approximately 988 square feet in total area. The variance is required due to the application of setbacks to the subject property resulting in no buildable area. A modification for setbacks is also required due to the fact that the lot has physical difficulties in facilitating construction of any kind. There are reasonable arguments to both approve and deny the applications. A Certificate of Compliance had been granted to this property as required by the Subdivision Map Act; however, it does not grant any particular development rights and it does simply indicate that the lot can be financed and sold. What needs to be determined, at this time, is the design and amount of square footage, and the location of the building that is appropriate for this lot, or is something smaller for this lot or leaving the lot as is with the existing two-car garage as developed.

Chairperson Toerge asked about the Certificate of Compliance.

Mr. Harp answered that a Certificate of Compliance is a remedy for properties that are conveyed in violation of the Map Act and in essence is a means to bring a property into compliance with the Map Act. However, it is not an optional item for the City to issue. Just because a Certificate of Compliance has been issued does not give them the right to develop a property, or have a right to a building permit, it simply brings them into compliance with the Map Act so that they can sell or lease the parcel. No development rights are given.

Commissioner McDaniel asked about a letter received regarding water pipes under this property connecting to another property.

Mr. Campbell answered there is a water line under the garage itself that serves the adjacent property that is the portion of the larger lot that was subdivided off in 1960. A private easement had been created with this transaction for the southerly three feet of the lot. The project, as proposed to be redeveloped, would create the three foot setback and maintain that water line free of obstructions. The project does adhere to the private easements of 1960.

Commissioner Tucker asked about the lot and what can be done with it. We have a lot that has effectively been created out of something that was not legal to begin with, now someone has come forward asking for a variance to build on this legal lot. Isn't that our question that something can be built on it before we worry about what it is? How did it become legal, assuming it is zoned? Are you saying you wouldn't be able to build on it all?

Mr. Campbell answered that if there was a project that could be built on this lot without a variance, or a setback modification, we would be issuing a permit for that structure. You can build on it, but in this case, a variance and modification permit are required.

Ms. Temple noted that there currently is a two-car garage on the property. That development, while it doesn't comply with the setback requirements or the floor area limits just as the proposed home and new garage does not, it does exist and doesn't

meet a building permit in order to stay in existence. In and of itself it does represent a viable economic use of the property and can be rented to anyone in the neighborhood to provide supplemental parking, and/or sold to one of the bayfront property owners and used to support that bayfront development through an off-site parking agreement and allow the actual bayfront structure to be expanded in floor area. There are other ways to use the property economically without building a house on it.

Commissioner Toerge noted that if we didn't need a variance then somebody could come in and apply for a building permit. The lot is a legal lot that we would have to issue a permit for it.

Ms. Temple answered yes, but because of the absence of any buildable area today, if they tore the existing garage down, they would need a variance for anything.

Commissioner Tucker noted there are other lots in the City where the Districting Map goes one way and at the end of the block and the house is oriented another way you end up with zero building area as well. It is a legal lot and to me this is why you do variances because you can end up with no building area on a legal lot and the question is, what is reasonable?

Mr. John Velardo, applicant, noted he has owned the property for 23 years. It has been his dream to build a beach house on it for his family to use. They have hired an architect and will be complying with the City's requirements and will be maintaining the same footprint as the existing garages. There will be no larger dwelling than is there now. At Commission inquiry, he noted he has read and understand the conditions of approval.

Commissioner Tucker noted an email from James Hazelton who contended that the building of this house would somehow deny access to his garage. Would staff confirm the answer to the email.

Mr. Campbell noted that the location of the structure is not within the private easement area that is for the benefit of the adjacent property. Now, does the proposal create some other impediment that the owner might feel, I don't know, but the building itself is not in the easement area. The two garages (referring to the one proposed and the one on the abutting property) come at 90 degrees to each other, so the only time they would conflict is if they were to be used at the same time.

Mr. Campbell added a condition relative to the interior dimension of the garage needs to be rectified as it is off by 6 inches. The plans will need to be revised to assure a minimum interior depth as required by the Municipal Code.

Commissioner Hawkins asked what the current use of the garage is.

Mr. Velardo answered the current use is storage, no vehicles are involved.

Public comment was opened.

Margie Kirstein, property owner of 505 and 505 1/2 38th Street, referring to the vicinity map, stated her properties are the ones most affected by this project. She noted her opposition to this project:

- The setbacks are extreme and do not allow for any kind of air space.

- The density, which originally was one lot, will now have three units on the original R2.
- This lot does not meet the 1,200 square foot minimum, and, at one point this development comes within 12 inches of the property line and sidewalk.
- There is a right to develop the property, but not to just any standard the owner wants.
- The garage space is currently rented.

David Prince, resident and homeowner, noted the following:

- Both he and his brother support this application.
- The island as a whole will benefit from this upgrade.

Public comment was closed.

Commissioner Cole asked about the third finding for a variance, if this is a granting of a special privilege inconsistent with the limitations on other properties in the vicinity. The gross area of approximately 988 square feet that is below the floor to land area ratio allowed in the vicinity, is that correct?

Mr. Campbell noted staff looked at other properties in the area and calculated the floor area to lot area ratio of those houses as a way to compare the amount of floor area being requested. What is proposed is proportionally lower and would support the finding that the approval is not the granting of a special privilege to the property owner.

Commissioner Cole asked if this was necessary for the preservation and enjoyment of substantial property rights of the applicant. This has been operating for 20 some odd years as a garage with the same basic use, is that correct? I am trying to make the findings that are important to grant the variance.

Mr. Campbell noted this garage has been there since 1960 with the same basic use that has never changed.

Chairperson Toerge referring to condition 7 says that, '..... the garage shall remain available for parking of vehicles at all times....' There is very little storage in the house itself, and I think that condition should be enhanced to, '....shall only remain available for the parking of **operable and legally** registered vehicles at all times...'

Mr. Velardo agreed that would be acceptable.

Commissioner Tucker noted:

- Variance requests are usually received to re-do a structure.
- It is necessary for a substantial property right.
- How this came into existence, they are all over town, but compared to other variances, this one certainly falls within that category.
- The question is, is it too much house for the space involved?
- It passes the test that we typically apply.

Motion was made by Commissioner Tucker to approve the variance request and the modification permit for PA2004-274 with the conditions attached with the changes of the minimum interior depth of the garage is per the Municipal Code and to have condition 7 stipulate that it is operable, registered vehicles being parked in that garage.

Commissioner Eaton noted we have had a number of applications where the back ends of lots have been quartered off. This lot is different from those as they have been done before the Map Act took affect so they were grandfathered and therefore, not illegal at the time of 'cutting'. This lot is one of the tiniest lots the Commission has seen and is a triangular and therefore less useable. It is further encumbered by two different easements. My concern is that if we validate what has occurred here, that someone goes out and cuts off illegally their lot, then someone (a subsequent) buyer applies for a Certificate of Compliance, which makes it legal to transfer or at least finance or lease. Why wouldn't this be a precedent to someone else looking to do a similar transaction? I would hate to encourage that scenario and therefore I do not support this application.

Commissioner McDaniel note he agrees with the previous comments. He added that other variances have been granted on properties that had a house already on it and they were applying for some type of parity to make it something useable. This one is different where it has always been a garage and I think they have viable economic use and this does not take away anything that they had before. I think this would set a precedent and therefore am not in support of this application. It is a congested area and it is my opinion that the garage will be a living space, with a ping pong table, then a bed, etc. I don't think it will be used for parking in this congested area.

Commissioner Tucker asked if somebody decided to pare off their lot and sell and convey it to somebody else, would we have to issue a Certificate of Compliance under today's version of the Subdivision Map Act?

Mr. Harp answered was answered yes.

Mr. Campbell added that if there was a project to develop with that scenario, then staff would condition that Certificate of Compliance with all current standards of the Subdivision Code.

Mr. Harp added that if there was a violation of the Subdivision Map Act and the owner asked for a Certificate of Compliance, the City would have to give it to them. Whether or not you have to let them develop, you don't. Basically you do not have to give them a variance or a building permit. However, you condition the project to comply with the Subdivision Map Act. There are other penalties with doing it that are not tied to the Certificate of Compliance. Because this is an undersized lot, they need a variance because right now they can not build anything on it. Whether you give them that, it is your discretion. It is not a 'takings' issue because they are already using the lot for a garage that has a viable economic use.

Discussion followed.

Chairperson Toerge noted that there are some extraordinary and exceptional circumstances here. In terms of the substantial property rights, it is zoned residential, it is not zoned for "garage". In order to enjoy that substantial property right, allowing the applicant to build a house for residential purposes seems to be consistent with that. It is consistent with the Code and does not damage anybody or creates any safety issues. He is support of the motion.

Commissioner Cole noted he agrees with the Chairman and is in support of the application.

Commissioner Henn noted we do not have the perpetrator before us, I am sympathetic

to the current owner's situation. I visited the site and I don't believe the proposed plan is inconsistent with the character of the neighborhood.

Commissioner Tucker asked what year the Map Act was adopted.

Mr. Harp answered that it was 1971 when it was actually codified, but it goes back to the 1800's.

Mr. Campbell added that the City established subdivision standards and in 1959 the Code was changed to require parcel maps reviewed by the Commission if the lots that were suggested didn't meet the minimum parcel size, which this lot does not. This division would have required a map in 1959 if the division happened in 1960.

Commissioner Hawkins noted that the finding on the certificate of compliance say that you issue the certificate but the Planning Director states that the above described real property does not comply with the applicable provisions, nevertheless, pursuant to the Subdivision Map Act what we are creating is an identifiable parcel that we can track. The arguments presented tonight are very important, but this parcel is too small and Newport Island has a host of problems that this project would exacerbate and so he can not support the motion.

Ayes:	Cole, Toerge, Tucker and Henn
Noes:	Eaton, McDaniel and Hawkins
Absent:	None
Abstain:	None

SUBJECT: Brookfield Homes (PA2004-251)
1301 Quail

ITEM NO. 4
PA2005-251

Brookfield Homes plans to construct 86 multi-family residential condominium units within 7 buildings that will be 45 feet in height with floor plans ranging from 900-1,950 square feet on a 3.7-acre site located at the southeast corner of the intersection of Spruce street and Quail Street in the Airport Area. A General Plan Amendment is proposed that would change the land use designation of the property from Retail & Service Commercial to Multi-Family Residential. An amendment of the Newport Place Planned Community is sought to change the use of the site from a 304 unit extended stay hotel to multi-family housing. The changes to the Planned Community district regulations will establish use and development regulations for the proposed condominium project. A tentative tract Map is also sought that would subdivide the lot to establish 86 condominium units.

Continued to
December 8,
2005

Larry Lawrence, City's consultant case planner for this project, gave an overview of the staff report, noting:

- Project consists of 7 buildings up to 45 high within a 'U' shape with garage level located partially below grade.
- The applicant is asking for Commission comments and questions and then a continuance to November 17 for further review and a forwarding of a recommendation to the City Council.
- The project will be changed from a retail and service commercial to a multi-family residential designation.

- The zoning amendment would add provisions for residential development to the Newport Place PC regulations. These residential standards were derived by staff from the submitted site plan as shown on the wall.
- The changes would include from a hotel to a multi-family residential, reducing the building height from 60 to 45 feet, and establishing development standards to accommodate the project as submitted. Reduction in building height and overall use will have positive benefits in terms of building mass and traffic generation.
- The setbacks from Quail Street and Spruce Street average about 13 feet. These setbacks may not be enough to provide visual relief and adequate landscape buffering. The interior of the project is taken up by paving and building coverage which does not leave ample room for landscaping.
- The 217 space garage and other parking spaces provided on site, meet the Zoning Code numerical standards. Those spaces include 72 tandem garage spaces. If the spaces provided do not satisfy that demand in actual usage, there is no permitted on-street parking on surrounding streets to absorb the overflow. Therefore, if there is overflow, parking facilities for adjacent office development may be impacted.
- To address these concerns, In August of 2005, the applicant commissioned a parking study for the project by the IBI Group. That study concluded that based on the requirements set forth by the City of Newport Beach, this project will supply sufficient parking to meet the estimated demand generated by residents and guests.
- He noted that in addition to the benefits of the project listed in the report, the applicant has submitted arguments in favor of the project and are attached to the report as exhibit 3.
- The central issue of this project is the land use. Is it appropriate and desirable to establish residential land use at the proposed location? That issued is addressed by the pros and cons contained within the staff report.
- Project design is secondary to the land use issue. If appropriate, the architectural design and setbacks if acceptable, warrant approval.
- The opportunity to provide in-fill housing opportunities near a major employment center and to improve the job housing balance in the area is a powerful argument in favor of the project.
- Because of the concentration of office and commercial uses, the area is heavily impacted by peak hour traffic at present. The change in land use would result in less peak hour traffic generation than the existing hotel designation on the property.
- Potential problems are inherent in establishing a residential designation on one parcel surrounded by office and commercial development without a coordinate plan for a residential development in the airport area.
- Staff asks the Commission for public input and deliberate on the analysis and continue this item to November 17th to allow further consideration of the project

and the forwarding of a recommendation to the City Council.

Mr. Campbell added:

- Staff prepared and placed a memo about the traffic study. We discovered that we used the wrong trip generation rates for the study prepared for the project. It over predicted a.m. traffic and under predicted p.m. traffic (less than a dozen trips). We prepared an analysis and arrived at the same conclusion that there would be no impact to traffic.
- There is a set of CC and R's for Newport Place, which presently prohibit this land use in this area. The applicant would need to seek and obtain an amendment to those CC and R's, which is the group owners would all have to agree to (70%).
- Staff believes the central focus for tonight is the land use if appropriate then move on to the design and other technical points.

Commissioner Henn asked:

- Is it premature to be discussing this project as we are in the midst and in the advanced stage of considering a General Plan update, which includes this area as one of the critical study areas for land use?

Chairperson Toerge answered that we have had a project such as this that is 'outside of the box'. For instance we had a preliminary presentation with the Lexus Dealership project and other relatively complicated projects in an effort to give the applicant and staff some direction as to how we are leaning so they do not pursue a path and spend staff and applicant time pursuing a path that the Commission does not agree with. They are appropriate for that reason.

Commissioner McDaniel noted that if this did not happen then the item gets continued anyway.

Commissioner Tucker asked:

- One of the things to be covered at the next General Plan Update land use session will be the airport area. Why shouldn't we wait until the policy decision on housing in the airport is made?
- He asked for a color/materials board, a marking of elevations and a copy of the roof plan.
- He then asked why Spruce Street is a four lane street.

Mr. Lawrence said he would provide the exhibits requested at the next meeting.

Mr. Edmonston answered that Spruce Street was planned to go over the freeway and join the Spruce Street that is now blocked off.

Continuing, Commissioner Tucker noted the prohibition against street parking, you could have one lane there to accommodate street parking and be quite comfortable?

Mr. Edmonston answered the concept at that time of development was no on-street parking and that was the standard in terms of actual demand. It could be explored and is one of the issues being looked at in the General Plan update as a residential use that could accommodate changes to the streetscapes, whether parking or wide parkways, etc.

Ms. Temple added that if an abandonment or lane reduction might be appropriate, then staff could look at the Circulation Element with the thought of an amendment to accommodate this process.

Commissioner Tucker noted:

- Tandem parking has always been an issue for the Planning Commission.
- The applicant needs to explain why this item should be determined prior to the General Plan update; would this be the development plan the applicant would set forth if there was no Green Light.
- Has the Fire Department looked at the internal street circulation? He was answered yes.
- The wall along Quail Street looks to be very close to the units as well. What will the wall look like?

Commissioner Eaton asked if the TPO traffic study needs to be approved and, if so, the Commission needs to see the study. What would the City and/or the CC and R's require if this parcel was developed in accordance with its current designation as hotel?

Mr. Lawrence answered that the current designation of hotel using the front setback is a minimum of 17 1/2 feet average 30 feet, the corner lot side is a minimum of 14 1/2 feet average 27 feet, and the interior side would be a minimum 10 feet. The average would be 30 feet for the front, which would be Quail, possibly Spruce, and for the Quail outside, the same at almost 30 feet.

Mr. Phillip Bettencourt, speaking for the applicant, noted the following:

- This application includes a General Plan Amendment and zone change to convert the vacant, industrial site.
- The site covers approximately 3.7 acres and includes affordable housing.
- There will be easy access to recreation, businesses, shopping and freeways.
- Traffic impacts are less than significant with modes mitigation.
- Airport noise contours - we are beyond the 65 CNEL Contour Zone although air conditioning for all buildings is recommended and accepted by the applicant.
- We are consistent with the John Wayne air loop and we are waiting for receipt of our final FAA clearance.

Dave Bartlett of Brookfield Homes, noted the following:

- This project is an opportunity for the City to see a transformation of residential land use into the airport area. He gave a brief description of his company.
- The Quail and Spruce Streets elevations are an important factor in siting these buildings close to the street and will contribute to the street scene that will be maturing over the years.
- Referring to an exhibit, he noted the importance of the buildings orienting towards the streets.
- Setbacks and vertical and horizontal separation from the right-of-way appear to fit into the context of the site.
- We have a materials board that include stucco, wood siding, brick and metal roofing.
- He noted the garage and tandem parking that provide for 217 spaces, of which 72 are tandem garage spaces within the same unit, and 167 covered spaces and additional flex space on garage level to be used for storage, home office or work areas.
- He then explained the building unit diagrams on the various levels.
- Referring to the site plan he noted the gate access/autocourt access/emergency access/pedestrian access.
- He then referred to the common park area.
- 17 of the 86 units are proposed for affordable housing to moderate income units and is a critical element in the consideration.
- This site is designated as suitable for residential development.
- He then enumerated residential uses within commercial uses in the City.
- He then noted the proximity to commercial and freeway systems.
- Benefits of the project are smart growth and new urban strategies, reduction of traffic, this is a first step in mixed use for the airport area as well as the affordable housing aspect.
- Our next steps are to respond to your concerns. We have some items with the Airport Land Commission and the FAA that will be dealt with as well as any concerns needing to be mitigate from the Negative Declaration as well as concerns from the Council considerations.
- There are pros and cons to this project, but this project allows for a high density project at 23 units per acre that is consistent with the threshold of the Green Light Initiative, has no traffic impacts, no noise impacts, close to infrastructure and services. This is a modest step in the right direction for mixed use in the airport area.

- Would we propose a bigger project if there was no Green Light? I don't think you could get a quality, bigger project here on this site for sale without increasing the density and sacrificing what you want to do in a 'for sale' project.

Adrian Foley, President of Brookfield Homes, noted:

- Market demand for housing - lower maintenance housing closer to places of interest and travel are high in demand.
- The growing sector of young professionals who want to live closer to their work.
- Population growths along with job creation creates demand for housing.
- This project presents an opportunity for high quality convenient housing close to places of work and benefit the community.

Public Comment was opened.

Gabriel Klanian, resident, noted his support of the project as it is will be quiet at night when the airport shuts down and the street is not highly traveled. If the buildings are constructed with sound proofing, the air-conditioning will be suitable to keep the noise. People such as myself do not want the maintenance of a yard and this would be quite suitable.

Doug Owen, noted his support of this project due to the proximity of the airport and local amenities.

George Minter of Los Angeles and speaking for Brookfield noted they have received letters in support of the home ownership prospect. He distributed the letters noting highlights such as proximity of home to work; ownership possibilities, and creation of homes without using expensive land.

Jim Light, one of the owners at the property at 1401 Quail Street, noted his opposition to the property:

- The only exit from this project is directly across from his property.
- No on-street parking so overflow parking will be onto his parking lot.
- Impact of trash - we have commercial trash containers on site and there will be illegal dumping.
- We have single story building and if we chose to develop the property into a multi-story project, which is allowed, this sets up a situation where there will be 86 homeowners complaining that the project doesn't fit in the area. Now, we will be precluded from developing it within the original guidelines due to these 86 homeowners coming up with problems of shadow, parking, etc.
- He referred to a letter sent to the Commission and asked that these issues be addressed.

Public comment was closed.

Commissioner Eaton asked if all the garage spaces were part of the condo sale to the units and do some of the units only have one car garages, etc.?

Mr. Bartlett answered:

- 5 units have a single car garage with approximately 250 square feet of flex space on the same floor. There is an assigned second space that is uncovered adjacent or as close to that unit as possible.
- In the twelve unit building there are 9 of the same type of units that have two garage spaces, although they are separate but covered.
- 36 interior spaces are tandem.
- There will be a homeowner's association that will enforce the use of the garage spaces due to the high density of this project.

Chairperson Toerge then read the rules for extension of hours regarding new agenda items being introduced after 10:30. A vote was taken to extend the time for the last item on the agenda.

Commissioner Eaton asked if the City is facing any deadlines under the Permit Streamlining Act?

Ms. Temple answered no, this is a legislative act and is not subject to the Permit Streamlining Act.

Commissioner Eaton noted his concerns:

- This application needs to be viewed in the context of at least the recommended policies in the airport area land use General Plan update element.
- We may want to wait for the full Roma study which deals with how residential will fit in to the airport area.
- Setbacks - parking- allocation of open space - noise on balconies on the Bristol Street North, may be problematic.

Commissioner Hawkins stated he agrees with the previous concerns adding:

- Planning where this fits with the existing plan and the Roma study;
- CC and R's for the PC text;
- This application may be premature;
- If this project is approved, what happens with the Green Light issues.

Ms. Temple noted the complete charter section 423 analysis is on page 7 and 8.

Commissioner Cole noted:

- Providing in-fill housing is a positive thing.
- Land use issue needs to be discussed.
- Parking is a concern.
- The design looks good.

Commissioner Hawkins asked how many trips are available for other development under the Charter Section 423 analysis.

Ms. Temple answered that is on page 8 in the second chart that shows the cumulative development that has been approved.

Mr. Campbell noted the project would take 86 units out of the 100 trip threshold. We would then track 80% of those 86 for the next ten years against any other general plan amendments requesting residential units in the airport area. The existing land use of a 304 room hotel and this project generates less traffic than that therefore the net increase is zero.

Chairperson Toerge noted:

- Need to look at the affect of the no-street parking and the allocation of visitor parking.
- Noise contours from all sources and potential allowable uses on adjacent commercial properties should be considered in the design of the project on all locations.
- Traffic saving amenities may be offset from its distance from schools, parks and readily available grocer shopping and the like.
- Setbacks are a concern and he would like to see the ratio between the current setbacks and allowable building heights compared to the setbacks and heights of the proposed structure.
- The process for the General Plan update is important.
- The Traffic Phasing Ordinance is important and needs to be reviewed.

Commissioner Tucker noted his concurrence with all previous Commissioners' statements noting that the land use is a threshold issue and it may not be just the change of the use but the intensity of the use as well. He would like more information on what the project will look like with materials board, colors, elevations, wall detail and trees already on the site.

Commissioner McDaniel, noted:

- He is please with the affordable housing aspect of the project.
- Concerned with the tandem parking issue.

- Concern of the neighbors need to be addressed, hopefully prior to the next meeting.

Commissioner Henn noted:

- We need to have a substantially better understanding of where the City is heading with the General Plan in this study area.

Commissioner Tucker asked that the City Attorney's office have the right to review and approve the CC and R's on the property. The CC and R documents should grant to the City the right of enforcement of the parking provisions.

Following a brief discussion on timing of this project along with deliberations on the land use in the airport area, circulation and mobility policies of the General Plan update, it was agreed that the first meeting in December would be the better time to hear this project.

Motion was made by Commissioner Tucker to continue this item to December 8, 2005.

Ayes:	Eaton, Hawkins, Cole, Toerge, Tucker and McDaniel
Noes:	Henn
Absent:	None
Abstain:	None

SUBJECT: Lennar Homes (PA2004-169)
900 Newport Center Drive

ITEM NO. 5
PA2004-169

Lennar Homes proposes to construct 79 residential condominiums on a 4.25 acre site presently developed with tennis courts operated by the adjacent Newport Beach Marriott Hotel. The applicant proposes to construct three buildings that are approximately 65 feet in height. The requested applications would change the General Plan and Local Coastal Land Use Plan land use designations from commercial to Multiple Family Residential. The existing APF zoning is also proposed to be changed to PC (Planned Community) and a Planned Community Development Plan text that would establish use and development regulations is proposed. Implementation of the project also requires a Traffic Study pursuant to the Traffic Phasing Ordinance, Tentative Parcel and Tract Maps for subdivision purposes, and a Coastal Residential Development Permit regarding the provision of affordable housing in accordance with the Zoning Code and Housing Element of the General Plan.

**Recommended
for approval**

Commissioner Tucker recused himself from deliberation on this item.

Ms. Rosalinh Ung gave an overview of the staff report, noting:

Development consists of 79 condominium units with 8 different floor plan options with underground parking structures.

- General Plan amendment/LCP Land Use Plan - the change from APF to Multi-Family Residential is necessary because the proposed residential uses are not permitted in the APF designation.
- The MFR land use designation is appropriate for the project and will be compatible with the surrounding uses.
- The Planned Community Development Plan Text Adoption is a request to rezone

the subject property from APF to the PC District and waiver of 10-acre minimum land area requirement for Planned Community District as the subject property is approximately 4.25 acres in size.

- Tentative Parcel Map is requested to sub-divide the property from the Marriott Hotel complex. The subsequent Tract Map is proposed for the condominium ownership.
- The Traffic Study has been prepared pursuant to the Traffic Phasing Ordinance and concluded that project related traffic does not cause an unacceptable level of service at the studied intersections.
- The Coastal Residential Development Permit is required as the project includes 16 units for affordable housing in accordance with the Municipal Code. The applicant proposes to locate these units off-site within the City limits.
- A Mitigated Negative Declaration has been prepared to evaluate the project with traditional zoning of multiple family residential followed by a thirty day review period from July 15th to August 15th of this year.
Since then it has been determined the most appropriate zoning designation for the property would be Planned Community. An addendum has been prepared to address the change of the zoning designation and is attached to the document for consideration.
- Staff believes the findings for this project can be made and that it provides additional residential opportunities comparable with surrounding area of Newport Center.

Chairperson Toerge asked if the new condominiums would absorb any of the 79 unused allocation. He was answered no.

Mr. Dustin Fuller of David Evans and Associates, responsible for the environmental documents, noted:

- The project will be exporting about 40,000 cubic yards of material, which equates to approximately 80 truck trips per day over a 36 day period, which broken down equals 11-12 truck trips per hour. The total ADT added to the project will be minimum and will not affect traffic impacts.
- The air quality analysis includes mitigation measures that would also include covering the free board on the export material and require cleaning of the streets as the trucks exit.
- We will be adding language in assuming a 30 mile round trip for the fill site as the maximum. The applicant will be looking for something closer. Based on a 30 mile round trip with 80 truck trips we would put a number on the trips. ***'During demolition and excavation daily total haul trucks shall travel no more than a cumulative 2400 miles per day hauling materials from the site to and from the dumping site.'*** Another mitigation measure to be added to addresses a haul truck route. ***'Prior to commencement of demolition and grading of the project, the applicant shall submit to the City calculations showing the proposed travel route for all trucks, the distance traveled and how many daily truck trips that can be accommodated while keeping the cumulative miles traveled***

to below 2400 miles each day. The daily haul truck trips shall not exceed 2400 miles during demolition and excavation activities.

Mr. Harp asked that '**review and approval by the City**' to be included in both new measures.

Chairperson Toerge, referring to page 4 of the Errata, questioned the accuracy of the building coverage of 100% less setback represented in the chart.

Ms. Temple explained that appears to be allowing coverage to the buildable area of the site.

Chairperson Toerge asked if the construction works parking was addressed in the EIR? He was answered, no.

Mr. Fuller noted that generally during construction, the workers park on the site. However, there is no formal analysis.

Ms. Temple stated this is not a matter of environmental review, rather it is a matter for the Building Department and the Public Works Department as the grading plan is approved and the project building permits are approved. If there is a thought there might be a parking problem, we would ask the contractor to identify how that would be managed so there would not be on-street impacts.

Continuing, Chairperson Toerge noted there is a discussion on what to do when the trucks leave the site. Considering the water quality issues, could we specify that sweeping is the means of cleaning the street and disallow hosing down the streets.

Ms. Temple answered yes.

Chairperson Toerge, referring to page 346 of the Mitigated Negative Declaration, asked about the housing stock and vacancy percentage.

Ms. Temple answered there is a very high vacancy rate because of the high number of second homes; turnover in the rental stock, and that is what the Census tells us.

Coralee Newman, Principal of Government Solutions, representing the applicant, noted that the Marriott Hotel has been going through an extensive renovation. As part of that effort they seek to acquire a Residential Development on the property adjacent to the hotel on land utilized as tennis courts. This would provide an opportunity to bring new 'for sale' homes in the Newport Center. She then introduced her team members. She noted that Lennar has reviewed all the conditions in the staff report and mitigation measures and are in agreement to all.

Marice White of Government Solutions, noted the following during a PowerPoint presentation:

- Aerial photo of the site location.
- As part of the Marriott renovation it became apparent that the tennis courts were no longer being used.
- The proposed project is 4.25 acre site with 79 luxury condominiums.

- The proposed project will be going through the Coastal Commission for their determination following approval of the applications.
- This is a unique residential opportunity in Newport Center.
- We are requesting that we have a maximum height of 65 feet while we are allowed up to 375 in the high rise district.
- The FAR on the site is 1.9; which includes the 100% subterranean garage.
- We have 201 spaces provided, 198 required, which is 2 spaces per resident with 1/2 space per guest.
- The guest spaces are equally distributed throughout the garages to coordinate to the units they are intended to serve and are not grouped in one specific area.
- The Negative Declaration was prepared and circulated in June of this year, reviewing a number of areas such as air quality and no significant impacts were identified as a result of the project.
- The surrounding neighbors would be the Colony Apartments across the street, the Marriott on one side, and the country club on the other side.
- We are having on-going discussions with the country club on coordination, sales disclosures and CC and R's protect both the residents and the golf course.

Kevin Buchta, MVE, speaking for the applicant, noted the following on the project site:

- Site is constrained on the Santa Barbara edge by 15-20 feet of grade fall to the golf course edge.
- The building will be stepped up with a 2 and 3 story Type 5 construction over one level of a parking garage.
- The architecture is Mediterranean style with smooth stucco detailing, precasts surrounds on the windows, wrought iron detailing on railings and Juliet balconies and Mediterranean inspired roof details with built up fascias.
- The Santa Barbara edge has the pedestrian linkages to Fashion Island and entries to the buildings. There are wide expanses of glass and expanded decks at the lower level.
- He then explained some of the various unit layouts and floor plans.

Marris White continued:

- This project has been in the planning and design phase for two years.
- It has received review and approval of The Irvine Company.
- It is compatible with the surrounding uses.

- The site has two entrances off Santa Barbara for both residents and guests.
- There are two entrances off the promenade where both residents and guests will park.
- There are several access points from the units where residents and guests can egress to Fashion Island.
- She then noted exhibits views taken from a third story building and how the buildings will look along Santa Barbara, as well as from the golf course.
- They have received many inquiries as to potential buyers.
- This is a 4.25 acre site with nearly 2 acres of open space.

At Commission inquiry, Ms. White noted the applicant has agreed to a condition that they will locate 16 units of affordable housing somewhere in the City of Newport beach. The agreement will be in place approved by the City Attorney by the issuance of the certificate of occupancy.

Commissioner Eaton asked about the parking designation of visitor parking; access restrictions.

Mr. Buchta, referring to the garage plan, showed the visitor parking designations.

Marris White added that residents' parking will be behind gates and that the CC and R's are to be crafted in such a way that restrict residents to only park in those spaces as well as they are not able to lease those spaces out and that guest parking is specifically marked and will be designated as 48 or 72 hour stipulation for guest parking. Guest parking will not be behind the gates, residents' parking will be gated. The parking levels will be clearly marked with what building a driver is going to and spaces and levels will have signage or something on the pillars. Guests will have some type of phone security box to be buzzed up into the building.

Commissioner Cole asked what the feature that separates the golf course from the property.

Ms. White answered that the building itself in a lot of the places acts as a fence; where the building is open there will be a fence between the golf course and the property. Depending on what the edge looks like, some of those units are 3-4 feet above grade as it is so they likely won't need a fence, but, in other places the golf course has expressed their desire to have a fence. We are working on something that will be amenable to both Lennar and the golf course and nice for the residents. The buildings are approximately 15 feet back from the property line.

At Commission inquiry, Ms. White noted:

- They will be working on sales disclosures and CC and R's with regard to the errant golf ball and the safety rules.
- The architects are looking at special types of window materials.
- The rotunda effect are end units and allow for floor-to ceiling windows in the end

units at that location.

- There is no common room as the residents will have the use of the Marriott.

Public comment was closed.

Chairperson Toerge asked:

- Clarified the terminology used in the draft resolution.
- PC regulations - segregate or include a breakdown of the livable floor area and the parking square footage so that it is clearly shown why they are over the FAR.
- Condition 39 looks to be describing a problem but not a condition.
- Condition 81 - idling of construction vehicles for 5 minutes only then they are to be shut off.

Ms. Temple answered that the FAR reflects the total of the building and we establish the suggested FAR in the Planned Community text to support the proposed project.

Ms. Ung noted that the condition was drafted such that the applicant has the option to either re-locate or move it further away from that. It was agreed for condition 81.

Commissioner Henn clarified in the agreement for the affordable housing, those units will be identified and available by the time a certificate of occupancy is issued for the project.

Ms. Temple answered staff would want this at a minimum to be assured that they were actually in place before the City would allow occupancy.

Commissioner Hawkins noted this should be made a condition.

Mr. Harp noted that this will be incorporated into the agreement and add it to condition 5.

Commissioner Hawkins noted condition 15. The parking plan needs review and approval of the Public Works Department and City Traffic Engineer.

Mr. Edmonston answered that condition 46 covers review by the Traffic Engineer.

Motion was made by Chairperson Toerge recommend approval of General Plan Amendment No. 2004-005, Local Coastal Plan Land Use Plan Amendment No. 2005-001, Planned Community Development Plan No. 2005-003, Tentative Parcel Map No. 2005-014, Tentative tract Map No. 2004-004 (16774), Traffic Study No. 2005-002, and Coastal Residential Development No. 2005-004 to the City Council to the City Council and approve the Mitigated Negative Declaration OA2004-169 subject to the findings and conditions as modified.

Yes:	Eaton, Hawkins, Cole, Toerge, McDaniel and Henn
Noes:	None
Absent:	Tucker
Abstain:	None

ADDITIONAL BUSINESS:**ADDITIONAL
BUSINESS**

- City Council Follow-up - none provided due to late hour.
- b) Report from Planning Commission's representative to the Economic Development Committee - none provided due to late hour
- c) Report from Planning Commission's representatives to the General Plan Update Committee - none provided due to late hour
- d) Report from Planning Commission's representative to the Local Coastal Plan Certification Committee - none provided due to late hour
- e) Report from Planning Commission's representative to the Zoning Committee - none provided due to late hour.
- f) Matters which a Planning Commissioner would like staff to report on at a subsequent meeting - Commissioner Cole discussed the meeting that was held with the City Attorney, Chairperson Toerge, Jeff Goldfarb of Rutan and Tucker and Building Director Jay Elbetta regarding the Narconon intensification use and the ramifications of both Federal and State legislation that govern these facilities.
- g) Matters which a Planning Commissioner may wish to place on a future agenda for action and staff report - none.
- Project status - none provided due to late hour.
- i) Requests for excused absences - Commissioner Cole will be late at the next meeting and Chairperson Toerge will be leaving early.

ADJOURNMENT: 12:15 a.m.**ADJOURNMENT**

BARRY EATON, SECRETARY
CITY OF NEWPORT BEACH PLANNING COMMISSION

EXHIBIT 4

Attachment 1

RESOLUTION NO. 2006- 2

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH ADOPTING MITIGATED NEGATIVE DECLARATION (SCH NO. 2005-071067) AND APPROVING GENERAL PLAN AMENDMENT NO. 2004-005, LOCAL COASTAL PROGRAM LAND USE PLAN AMENDMENT NO. 2005-001, TENTATIVE PARCEL MAP NO. 2005-014, TENTATIVE TRACT MAP NO. 2004-004 (16774), TRAFFIC STUDY NO. 2005-002 AND COASTAL RESIDENTIAL DEVELOPMENT PERMIT NO. 2005-004 FOR PROPERTY LOCATED AT 900 NEWPORT CENTER DRIVE (PA 2004-169)

WHEREAS, an application was filed by Lennar Homes with respect to property located at 900 Newport Center Drive, and legally described as Parcel 1, as per map filed in Book 75 pages 33 and 34 of parcel maps, in the office of the County Recorder to construct 79 residential condominiums on a 4.25-acre site presently developed with tennis courts operated by the adjacent Newport Beach Marriott Hotel. The applicant requests approval of: a General Plan Amendment and an Amendment of the 1990 Local Coastal Plan Land Use Plan (LCPLUP) to change the land use designations of the 4.25-acre site from Administrative, Professional & Financial Commercial to Multiple-Family Residential; an Amendment of the 2004 LCPLUP to change the land use designation from Visitor-Serving Commercial (CV-B) to Medium Density Residential C (RM-C); a Zone Change to rezone the subject property from APF to the PC District; adopt a Planned Community Development Plan to establish permitted use and development regulations; consider a waiver of the 10-acre minimum land area requirement for Planned Community District adoption; a Parcel Map to subdivide the subject property from the hotel development for financing and development purposes; a Tract Map for the condominium ownership (79 residential units); a Traffic Study pursuant to the Traffic Phasing Ordinance (TPO) and a Coastal Residential Development Permit regarding the provision of affordable housing in accordance with the Municipal Code and the General Plan Housing Element.

WHEREAS, on November 3, 2006, the Planning Commission held a noticed public hearing in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California at which time the project applications, the Mitigated Negative Declaration and comments received thereon were considered. Notice of time, place and purpose of the public hearing was given in accordance with law and testimony was presented to, and considered by, the Planning Commission at the hearing. With a vote of 6 ayes (one recused), the Planning Commission recommended approval of the above-mentioned applications to the City Council.

WHEREAS, the property is located in the Block 900 - Hotel Plaza of the Newport Center (Statistical Area L1) of the Land Use Element and has a land use designation of Administrative, Professional & Financial Commercial (APF) and zoned APF (Administrative, Professional, Financial).

WHEREAS, pursuant to Section 20.94 of the Newport Beach Municipal Code, the City Council held a noticed public hearing on November 22, 2005, which was continued to December 13, 2005 without testimony, to consider the proposed applications and the recommendations of the Planning Commission.

COASTAL COMMISSION
NPB 1-06 Part A

EXHIBIT # 1

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WHEREAS, a General Plan Amendment and an Amendment of the 1990 Local Coastal Plan Land Use Plan (LCPLUP) to change the land use designations of the site from Administrative, Professional & Financial Commercial to Multiple-Family Residential is necessary as the proposed residential use is not permitted in the APF designation. A change in land use would result in a 4.25-acre reduction in land available to be potentially used for office uses consistent with the APF designation. However, within the Newport Center, there is approximately 200 acres designated APF and the two percent (2%) reduction proposed by the project is not a significant reduction.

WHEREAS, the residential condominium project is consistent with the proposed Multi-Family Residential land use designation. The proposed residential condominium project would be compatible with the residential developments to the south and northeast of the site. The proposed project is viewed as incompatible with the office uses across Santa Barbara Street and is also compatible with the adjacent hotel and golf course.

WHEREAS, the 2004 LCP Land Use Plan designates the site for Visitor Serving Commercial uses. This designation was applied due to the existing use of the Marriott Hotel complex. A change in land use designation from CV-B (Visitor-Serving Commercial) to RM-C (Medium Density Residential C) is necessary for the proposed residential development. The change in land use designation will reduce the land available for visitor-serving commercial uses by 4.25 acres. Although this reduction in area would occur, the opportunity to construct the remaining hotel room entitlement of 79 rooms would not be lost and they could be constructed nearby within a portion of Newport Center within the Coastal Zone.

WHEREAS, Section 30250(a) of the California Coastal Act (CCA) provides criteria for the location of new development. The Coastal Act provides for the protection of coastal resources by requiring that new development be located in close proximity to existing development with available public services to minimize the impacts associated with the extension of infrastructure and services. The project is located within Newport Center, which is a development area with all public services (utilities, roads, police, fire etc.) presently provided.

WHEREAS, Section 30262(4) requires new development within the Coastal Zone to provide adequate parking facilities or provide substitute means of serving the development with public transportation. The proposed development provides an adequate number of on-site parking spaces. The project also will be conditioned so that the parking structures will have adequate dimensions, clearances, and access to insure their proper use.

WHEREAS, Section 30212, requires public access must be provided from the nearest public roadway to the shoreline and along the coast in new development. The subject property is not adjacent to the ocean or bay; therefore, coastal access easements are not required.

WHEREAS, Section 30222 requires the use of private land suitable for visitor-serving commercial recreational facilities for coastal recreation must have priority over private residential, general industry, or general commercial development. Although, the change in land use designation will reduce the land available for visitor serving commercial uses by 4.25 acres; the opportunity to construct the remaining hotel room entitlement of 79 rooms would not

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be lost and they could be constructed nearby within the portion of Newport Center that is located within the Coastal Zone.

WHEREAS, the City's General Plan indicates that the City shall maintain suitable and adequate standards for landscaping, sign control, site and building design, parking and undergrounding of utilities and other development standards to ensure that the beauty and charm of existing residential neighborhoods are maintained, that commercial and office projects are aesthetically pleasing and compatible with surrounding land uses. The proposed PC Text contains one classification of land use and provides the development standards for the entire subject property. The draft PC Text contains development regulations for the subject site which includes definitions and information concerning requirements for development site coverage, building height, setbacks, off-street parking, vehicular access, signing, lighting, storage, and screening and landscaping to ensure that the project would be compatible with the surrounding land uses consistent with the objectives of the Land Use Element.

WHEREAS, to be consistent with the Housing Programs 2.2.1 and 2.2.3 of the City's Housing Element, the project is required to provide a minimum of 20% of the total units (16 units) for affordable income households for a minimum of 30 years. The applicant is requesting that the affordable housing provision be off-site, at an approved location within the City, as affordable housing is not feasible at the subject site. According to the applicant, the project's Home Owner's Association fees are expected to be a minimum of \$1,500 per month, which is a substantial multiple of the statutory mortgage payment limits for affordable housing when combined with acquisition costs and taxes. With this provision, the applicant will be required to enter into an agreement with the City to provide said units off-site within the City's limits. The agreement will be reviewed and approved by the City Attorney and will be executed prior to the recordation of tract map or the issuance of a building or grading permit for the proposed project.

WHEREAS, an approval of the project is implementing Housing Program 3.2.4 that allows the City to consider and approve rezoning of property from non-residential to residential uses when appropriate to extend housing opportunities to as many renter and owner occupied households as possible in response to the demand for housing in the City.

WHEREAS, Charter Section 423 requires all proposed General Plan Amendments to be reviewed to determine if the square footage, peak hour vehicle trip or dwelling units thresholds have been exceeded and a vote by the public is required. This project has been reviewed in accordance with Council Policy A-18 and a voter approval is not required as the project represents an increase of 39 - A.M. and 35 - P.M. peak hour trips for a new 79 dwelling unit development. These increases, when added with 80% of the increases attributable to two previously approved amendments, result in a total of 47 - A.M. peak hour trips and 43.8 - P.M. peak hour trips; 3,640 square feet of non-residential floor area and 79 dwelling units do not cumulatively exceed Charter Section 423 thresholds for a vote.

WHEREAS, the project is located within Newport Center where public services and infrastructure are available to serve the proposed development. Additionally, all applicable improvements required by Section 19.28 (Subdivision Improvements) of the Subdivision Code are to be satisfied by the applicant.

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WHEREAS, the parking requirement for a multiple-family residential zoned project is two spaces per unit, including one covered, plus 0.5 spaces for guest parking for developments of four or more units. A total of 158 spaces are required for the residences and a minimum of 40 spaces are required for guest parking. A total of 201 spaces are proposed to serve the project, and therefore, the project meets the parking requirements of the Municipal Code. In addition to the provision of adequate on-site parking, the project is conditioned that the parking designs meet all City requirements regarding parking stall width, depth, grade, and aisle-turning radii.

WHEREAS, pursuant to Section 19.12.070 of the City Subdivision Code, the following standard findings must be made to approve the Tentative Parcel Map and Tract Map.

1. The proposed Tentative Maps are consistent with the Newport Beach Subdivision Code (Title 19) and applicable requirements of the Subdivision Map Act. Conditions of approval have been included to ensure compliance with Title 19 and the Subdivision Map Act.
2. Lot 1 of the Parcel Map is being proposed for the residential development and is of sufficient size for the intensity of development and the site is physically suitable for the project. The project provides an adequate number of parking spaces as required by the Zoning Code. Access to the site can be provided through the proposed driveways along Santa Barbara Drive. Additionally, no earthquake faults were found on-site. There is no known incidence of landslide, lateral spreading, subsidence, liquefaction, or collapse on-site or near the site; however, existing soils will be required to be excavated and re-compacted to create stable soil conditions to support the proposed development. The implementation of mitigation measures identified in the draft Mitigated Negative Declaration would reduce any potential impacts. The site is, therefore, physically suitable for development.
3. Lot 2 of Parcel Map is proposed to retain a General Plan land use designation of Administrative, Professional & Financial Commercial. Lot 2 is not proposed for new development and this parcel will continue to be used as a hotel and it is of sufficient size to support its existing use.
4. Under the proposed Parcel Map, Lot 2 does not include any improvements and the development of Lot 1 as a residential use is not expected to cause serious public health problems given the use of typical construction materials and practices. No evidence is known to exist that would indicate that the proposed subdivisions will generate any serious public health problems. All mitigation measures will be implemented as outlined in the Mitigated Negative Declaration to ensure the protection of the public health.
5. No public easements for access through, or use of, the property have been retained for the use by the public at large. Public utility easements for utility connections that serve the project site are present and will be modified, if necessary, to serve the proposed project.

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6. Title 24 of the Uniform Building Code requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Department enforces Title 24 compliance through the plan check and field inspection processes.
7. The proposed subdivision facilitates the creation of 79 new residential units. The provision of 16 affordable units will assist the City in meeting its housing needs as identified in the Regional Housing Needs Assessment. Public services are available to serve the proposed development of the site and the Mitigated Negative Declaration prepared for the project indicates that the project's potential environmental impacts are expected to be less than significant.
8. Waste discharge into the existing sewer system will be consistent with residential use of the property which does not violate Regional Water Quality Control Board (RWQCB) requirements.
9. The proposed subdivision is entirely within the coastal zone and the site subject to the tentative maps is not presently developed with coastal-related uses, coastal-dependent uses or water-oriented recreational uses. The project is consistent with the City's 1990 Local Coastal Program Land Use Plan and the recently modified and approved LCPLUP that will replace the 1990 certified LUP. The subject site to be subdivided does not abut the ocean or bay, and does not provide public access to coastal resources; therefore, no impacts to coastal access are anticipated. Recreation policies of the Coastal Act require that site resources for water-oriented recreational activities that cannot be supplied inland must be protected. These policies prioritize water-oriented recreational activities over other land uses and encourage aquaculture and water-oriented recreational support facilities. The project site proposed to be subdivided is not suitable for water-oriented recreational activities due to its size and location, approximately 1.5 miles from the shoreline.

WHEREAS, the entire project is located within the Coastal Zone and requests the construction of 79 units. Pursuant to Chapter 20.86 of the Zoning Code, when a project proposes to create 10 or more units within the coastal zone, affordable housing must be included within the project unless it can be determined infeasible. The Housing Element of the General Plan determines the number and type of affordable housing that is required. In accordance with the Housing Element, 16 affordable housing units would be required to be provided.

WHEREAS, a Traffic Study has been prepared by Kunzman Associates under the supervision of the City Traffic Engineer pursuant to the TPO and its implementing guidelines (Appendix D of the Mitigated Negative Declaration), CEQA analysis for cumulative projects and intersection capacity utilization (ICU), and General Plan analysis. The project will result in a net increase of 330 new average daily trips, 42 vehicle trips during morning (AM) peak hour and 39 vehicle trips during the afternoon (PM) peak hour. The study concluded that the proposed project will not cause a significant impact at the study area intersections; therefore, no improvements are required at these intersections.

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WHEREAS, an Initial Study and Mitigated Negative Declaration (MND) have been prepared in compliance with the Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3. The Draft MND was circulated for public comment between July 15 and August 15, 2005. Comments were received from the California Coastal Commission, Airport Land Use Commission and Mr. Terek Saleh of Costa Mesa. The contents of the environmental document, including comments on the document, have been considered in the various decisions on this project. Since then, it was determined that the most appropriate zoning designation for the property would be PC (Planned Community). This new zoning designation does not affect the size, scope or design of the project that would potentially create additional physical environmental impacts. As result, it has been determined that the MND adequately describes the potential impacts of the project and does not require additional recirculation and review of the MND. An addendum has been prepared to address the change in the zoning designation and made it a part of the MND.

WHEREAS, on the basis of the entire environmental review record, the proposed project will have a less than significant impact upon the environment and there are no known substantial adverse effects on human beings that would be caused. Additionally, there are no long-term environmental goals that would be compromised by the project, nor cumulative impacts anticipated in connection with the project. The mitigation measures identified are feasible and reduce potential environmental impacts to a less than significant level. The mitigation measures are applied to the project and are incorporated as conditions of approval.

WHEREAS, General Plan Amendment No. 2004-005, Planned Community Development Plan No. 2005-003, Tentative Parcel Map No. 2005-014, Tentative Tract Map No. 2004-004 (16774), Traffic Study No. 2005-002 and Coastal Residential Development Permit No. 2005-004 shall only become effective upon the approval of LCP Land Use Plan Amendment No. 2005-001 by the California Coastal Commission.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newport Beach does hereby adopt Mitigated Negative Declaration (SCH No. 2005-071067); approve General Plan Amendment No. 2004-005 by amending the Land Use Element, Statistical Area L1, Block 800-Hotel Plaza and the Estimated Growth for Statistical Area L1 Table of the General Plan as depicted in Exhibit "A" and Land Use map in Exhibit "B", LCP Land Use Plan Amendment No. 2005-001 by revising Land Use map as depicted in Exhibit "C", Tentative Parcel Map No. 2005-014, Tentative Tract Map No. 2004-004 (16774), Traffic Study No. 2005-002 and Coastal Residential Development Permit No. 2005-004, subject to the conditions of approval listed in Exhibit "D"


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This resolution shall take effect immediately upon adoption. Passed and adopted by the City Council of Newport Beach at a regular meeting held on the 10th day of January 2006 by the following vote to wit:


AYES, COUNCIL MEMBERS Heffernan, Selich, Rosansky, Rideaway, Daigle,

NOES, COUNCIL MEMBERS Nichols, Mayor Webb None

ABSENT, COUNCIL MEMBERS None


MAYOR

ATTEST:


CITY CLERK



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RESOLUTION NO. 2006- 26

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH DECLARING THAT LOCAL COAST PROGRAM LAND USE PLAN AMENDMENT NOS. 2005-001 AND 2006-001 ARE INTENDED TO BE CARRIED OUT IN FULL CONFORMANCE WITH THE CALIFORNIA COASTAL ACT

WHEREAS, on January 10, 2006, the City Council approved Coastal Land Use Plan Amendment No. 2005-001 changing the coastal land use designation of a 4.25-acre site located at 900 Newport Center Drive from CV-B (Visitor-Serving Commercial) to RM-C (Medium Density Residential) allowing the development of 79 residential condominiums.

WHEREAS, on February 14, 2006, the Council approved Coastal Land Use Amendment No. 2006-001 changing the coastal land use designation of a 14.25 acre site located at 4850 West Coast Highway from RM-B (Medium Density Residential) to OS (Open Space) to facilitate the development of a public park.

WHEREAS, the approval of these two amendments should have included a finding that the amendments are intended to be carried out in full conformance with the California Coastal Act and they should have specified when the amendments become effective.

NOW, THEREFORE, BE IT RESOLVED

Section 1. Coastal Land Use Plan Amendment Nos. 2005-001 and 2006-001 are intended to be carried out in full conformance with the California Coastal Act.

Section 2. Coastal Land Use Plan Amendment Nos. 2005-001 and 2006-001 shall take effect automatically upon Coastal Commission action unless the Coastal Commission proposes suggested modifications. In the event that the Coastal Commission proposes revisions, the LCP Land Use Plan Amendments shall not take effect until the City Council adopts the Commission suggested modifications.

Section 3. This resolution shall take effect immediately upon adoption.

Passed and adopted by the City Council of Newport Beach at a regular meeting held on the 28th day of March 2006 by the following vote to wit:

AYES, COUNCIL MEMBERS Curry, Selich, Rosansky, Ridgeway,
Daigle, Nichols, Mayor Webb

NOES, COUNCIL MEMBERS ---

ABSENT, COUNCIL MEMBERS ---

MAYOR

ATTEST:

Lavonne M. Harkless

CITY CLERK



COASTAL COMMISSION
NPB 1-06 Part A
EXHIBIT # 2
PAGE 1 OF 2

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

**T 14a**

June 21, 2007

TO: Commissioners and Interested Persons

FROM: Sherilyn Sarb, Deputy Director, South Coast District (Orange County)
Teresa Henry, District Manager, South Coast District
Karl Schwing, Supervisor, Regulation & Planning, Orange County Area
Ryan Todaro, Coastal Program Analyst

SUBJECT: City of Newport Beach Land Use Plan Amendment NPB-MAJ-1-06
Part A (Marriott Hotel VSC to MDR/Santa Barbara Condominiums)

SUMMARY OF STAFF REPORT**DESCRIPTION OF THE SUBMITTAL**

The amendment that is the subject of this report was submitted as part of a package with other Land Use Plan (LUP) amendments. This report deals only with "Part A" of the amendment. Part A of the amendment consists of a request by the City of Newport Beach to change the land use designation of a 4.25 acre area (presently occupied by tennis courts) at the Marriott Hotel from Visitor-Serving Commercial to Medium Density Residential, at 900 Newport Center Drive, Newport Beach, Orange County. (Part B of the amendment was acted on separately at the Commission's July 2006 hearing, and Part C was retracted, in part because the City Council had not authorized its original submittal.) The proposed land use change would allow for the construction of condominiums (or other medium density residential) on the subject property. A corresponding coastal development permit application (5-07-085, Lennar) has been submitted and will be considered at a subsequent hearing.

SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission **DENY** the proposed City of Newport Beach Land Use Plan Amendment NPB MAJ 1-06 Part A as submitted and **APPROVE** the amendment subject to suggested modifications. The motions to accomplish this are found on Page 3.

The major issues raised by this amendment request are adequate provision of visitor-serving commercial development and public access. The proposed land use designation change from Visitor-Serving Commercial to Medium Density Residential would have an adverse affect on priority visitor-serving opportunities in the area. Residential development is a low priority use within the Coastal Zone. However, with the adoption of the suggested modifications, which include a new Land Use Plan policy that requires a payment of a fee to mitigate for the loss of visitor-serving land, the proposed land use designation change would not have an adverse affect on priority

NPB-MAJ-1-06 (Part A)

visitor-serving opportunities in the area. The mitigation fee shall be for the protection, enhancement and provision of lower-cost visitor-serving uses at Crystal Cove State Park in the amount of \$5,000,000.00 (five million dollars) to off-set the loss of the priority land use in Newport Center. This mitigation fee would fund Phase 2 of the ongoing Crystal Cove Alliance restoration effort of the Historic District at Crystal Cove State Park and which is presently contemplated to provide for the completion of the Outdoor Educational Commons (Cottages 40, 42, 43 and 44), the Beach Museum (Cottage 13), Cottage 5, Cottage 45, the garages and creek restoration.

ADDITIONAL INFORMATION

For further information, please contact Ryan Todaro at the South Coast District Office of the Coastal Commission at (562) 590-5071. The proposed amendment to the Land Use Plan (LUP) of the City of Newport Beach Local Coastal Program (LCP) is available for review at the Long Beach Office of the Coastal Commission or at the City of Newport Beach Planning Department. The City of Newport Beach Planning Department is located at 3300 Newport Boulevard in Newport Beach. Homer Bludau is the contact person for the City of Newport Beach, and he may be reached by calling (949) 644-3000.

EXHIBITS

1. City Council Resolution No. 2006-02 approved January 10, 2006
2. City Council Resolution No. 2006-26 approved March 28, 2006
3. Vicinity Map (Newport Center)
4. Land Use Map
5. Vicinity Map (Crystal Cove State Park)
6. Site Map (Crystal Cove State Park)
7. City of Newport Beach letter

**I. COMMISSION RESOLUTION ON CITY OF NEWPORT BEACH
LOCAL COASTAL PROGRAM AMENDMENT 1-06 (PART A)**

Motion #1

*"I move that the Commission **CERTIFY** the City of Newport Beach Land Use Plan Amendment NPB MAJ 1-06 Part A as submitted."*

Staff Recommendation for Denial

Staff recommends a **NO** vote. Failure of this motion will result in denial of the land use plan amendment as submitted and adoption of the following resolutions and findings. The motion to certify as submitted passes only upon affirmative vote of a majority of the appointed Commissioners.

Resolution for Denial

The Commission hereby **DENIES** the City of Newport Beach Land Use Plan Amendment NPB MAJ 1-06 Part A as submitted and adopts the findings stated below on the grounds that the amendment will not meet the requirements of and is not in conformity with the policies of Chapter 3 of the California Coastal Act. Certification of the Land Use Plan amendment would not comply with the California Environmental Quality Act as there are feasible mitigation measures and alternatives that would substantially lessen the significant adverse impacts on the environment that will result from certification of the land use plan amendment as submitted.

Motion #2

*"I move that the Commission **CERTIFY** the City of Newport Beach Land Use Plan Amendment NPB MAJ 1-06 Part A if modified as suggested in this staff report."*

Staff Recommendation for Certification

Staff recommends a **YES** vote. Passage of this motion will result in the certification of the land use plan with suggested modification and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of a majority of the appointed Commissioners.

Resolution for Certification with Suggested Modifications

The Commission hereby certifies the Land Use Plan Amendment NPB MAJ 1-06 Part A for the City of Newport Beach if modified as suggested and adopts the findings set forth below on the grounds that the Land Use Plan amendment with suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment if modified as suggested

complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the Land Use Plan Amendment may have on the environment.

II. PROCEDURAL PROCESS (LEGAL STANDARD FOR REVIEW)

A. Standard of Review

The standard of review for land use plan amendments is found in Section 30512 of the Coastal Act. This section requires the Commission to certify an LUP amendment if it finds that it meets the requirements of, and is in conformity with, the policies of Chapter 3 of the Coastal Act. Specifically, Section 30512(c) states: *"The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the Commission."*

B. Procedural Requirements

Pursuant to Section 13551(b) of Title 14 of the California Code of Regulations, a local government's resolution for submittal of a proposed LUP amendment must indicate whether the local coastal program amendment will require formal local government adoption after Commission approval, or is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513 and 30519. The City of Newport Beach's submittal indicates that this LCP amendment, if approved as submitted, will take effect upon Commission certification. Approval of the amendment with modifications will require subsequent action by the City.

III. BACKGROUND

The Land Use Plan (LUP) for the City of Newport Beach was effectively certified on May 19, 1982 and comprehensively updated October 13, 2005. The subject amendment was initially submitted by the City of Newport Beach on March 6, 2006. On March 15, 2006, Coastal Commission staff notified the City of Newport Beach that the submittal was incomplete and that additional information would be required to complete the submittal. City staff submitted the information on April 14, 2006. On May 18, 2006, Coastal Commission staff notified the City that the amendment request was complete. The Commission approved a request for a one-year (1) time extension of the amendment on June 13, 2006, which gives the Commission until July 13, 2007 to act on this submission. Part B of the amendment request, which involved a change in the

land use designation of another parcel from Medium Density Residential to Open Space, was approved by the Commission on July 12, 2006. Part A of the amendment request is now being submitted for Commission action. Part A involves a change in land use designation at 900 Newport Center Drive from Visitor-Serving Commercial to Medium Density Residential.

IV. SUMMARY OF PUBLIC PARTICIPATION

The City of Newport Beach approved this segment of the Land Use Plan amendment request (Part A) through a City Council public hearing on January 10, 2006. The item was originally scheduled for the Council hearing of November 22, 2005, but the item was continued to the December 13, 2005 hearing and finally approved on January 10, 2006. It was approved through City Council Resolution No. 2006-02, which approved General Plan Amendment No. 2004-005 and Local Coastal Plan Amendment 2005-001 (Exhibit 1). Prior to either the City Council approving the LUP amendment request, or the Planning Commission voting to recommend that the City Council do so, the Planning Commission held a public hearing on November 3, 2005. Notice was provided for both entities' hearings. Notice of the City Council's public hearing was mailed and posted on November 14, 2005 and published in the local newspaper on November 12, 2005. The City Council approved a subsequent resolution (Resolution No. 2006-26) on March 28, 2006 to correct procedural deficiencies in the original resolution related to the Coastal Act requirements (Exhibit 2).

One letter of opposition was received at the local level. The letter expresses concerns about increased density at the subject site. No oral comments were received during the public hearings held at the local level.

V. SUGGESTED MODIFICATIONS

Staff recommends the following suggested modifications to the proposed LUP amendment be adopted.

Suggested Modification #1

Add the following new Land Use Plan policy to Chapter 2, Section 2.3 (Visitor-Serving and Recreational Development), Sub-section 2.3.1 (Commercial) of the Coastal Land Use Plan after existing policy number 2.3.1-7:

- 2.3.1-8 LCP Amendment No. 2005-001 (NPB-MAJ-1-06 part A) to the Coastal Land Use Plan changing a portion of land, not to exceed 4.25 acres in size, designated Visitor-Serving Commercial (CV) in Newport Center to a residential designation shall require a payment of a fee to mitigate for the loss of visitor-serving land. The mitigation fee shall be used for the protection, enhancement and provision of lower-cost visitor-serving uses

at Crystal Cove State Park. The mitigation fee shall be in the amount of \$5,000,000.00 (five million dollars) to off-set the loss of the priority land use in Newport Center. The mitigation fee shall be paid prior to issuance of any coastal development permit granted for any residential project within the newly designated area and to an entity, identified by the permitting agency, capable of implementing the mitigation at Crystal Cove State Park. Until paid in accordance with the terms and conditions of the coastal development permit, the amount shall be increased every July 1st by an amount calculated on the basis of the percentage change from the year 2007 in the California Consumer Price Index for Urban Consumers as determined by the entity that grants the coastal development permit.

The addition of this new policy may affect the numbering of subsequent LUP policies when the City of Newport Beach publishes the final LUP incorporating the Commission's suggested modifications. This staff report will **not** make revisions to the policy numbers. The City will make modifications to the numbering system when it prepares the final LUP for submission to the Commission for certification pursuant to Sections 13544 and 13544.5 of the California Code of Regulations.

Suggested Modification #2

The City shall submit a revised Coastal Land Use Plan Map (i.e. that map referenced in Chapter 2, subsection 2.1.2 of the Coastal Land Use Plan), which reflects the land use change approved by the Commission through this amendment.

VI. FINDINGS FOR DENIAL OF CERTIFICATION OF THE CITY OF NEWPORT BEACH LAND USE PLAN AMENDMENT, AS SUBMITTED, AND FINDINGS FOR APPROVAL OF THE CITY OF NEWPORT BEACH LAND USE PLAN AMENDMENT, IF MODIFIED AS SUGGESTED

A. Amendment Description

The proposed submittal consists of a request by the City of Newport Beach to change the land use designation of a 4.25 acre area (presently occupied by tennis courts) at the Marriott Hotel from Visitor-Serving Commercial to Medium Density Residential, at 900 Newport Center Drive, Newport Beach, Orange County. Approximately 9.54 acres of Visitor-Serving Commercial (VC) would remain on site in Newport Center after the land use designation change. The proposed land use change would allow for the construction of condominiums (or other medium density residential) on the subject property.

B. Findings For Denial

The Commission hereby finds and declares as follows:

Site Description and Land Use Designation

The proposed land use redesignation will affect only one site—900 Newport Center Drive in the City of Newport Beach, Orange County. The 4.25-acre site is located in the Newport Center/Fashion Island area of the City, inland of Pacific Coast Highway (Exhibit 3). The site is currently operated as a private tennis club used by members and guests of the Newport Beach Marriott Hotel. There are eight outdoor tennis courts, a clubhouse and ancillary uses on the property. The property owner proposes to subdivide the subject site from the larger hotel parcel and develop a 79-unit condominium project.¹

The site is currently designated Visitor-Serving Commercial (CV-B) in the City's Certified Land Use Plan, as depicted in Exhibit 4. The site is surrounded by a golf course to the west and north, hotel development to the south, and commercial offices to the east.

Coastal Act Policies

As stated previously, the Coastal Act is the standard of review in the current analysis. The Coastal Act encourages the provision of lower cost visitor and recreational facilities and prioritizes visitor-serving commercial development over residential development. The proposed LUP amendment is not in conformity with the public access and recreation policies of the Coastal Act relating to the provision of visitor serving development. Applicable provisions of the Coastal Act include the following:

Section 30213 states, in pertinent part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30222 states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

¹ Coastal Development Permit Application 5-07-085 (Lennar), which seeks authorization to develop the condominium project, will be considered by the Commission at a subsequent hearing.

Applicable Land Use Plan Policies from the certified Coastal Land Use Plan

2.3.1-3 *On land designated for visitor-serving and/or recreational uses, give priority to visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation over other commercial uses, except for agriculture and coastal-dependant industry.*

2.3.3-3 *Encourage visitor-serving and recreational developments that provide public recreational opportunities.*

Proposed Change in Land Use Designation

The proposed amendment (NPB MAJ 1-06, Part A) involves a request to change the land use designation of a 4.25-acre area of the Newport Beach Marriott Hotel from Visitor Serving Commercial to Medium Density Residential at 900 Newport Center Drive. No other properties are subject to the proposed land use change.

The proposed change will have an adverse affect on priority visitor-serving opportunities in the area. Residential development is a low priority use within the Coastal Zone. The City indicates, however, that the loss of CV-B designated land at this location will not have an adverse affect on visitor-serving commercial or recreational activities.

According to the amendment request, "[t]he property is not located in close proximity to coastal resources, coastal recreational use or the water and the change in land use does not impact the adjacent visitor serving uses other than to eliminate the accessory tennis courts, which is not a coastal dependent recreational activity." Although the tennis courts are not typically considered a "coastal dependent" activity, tennis is a recreational activity, and the site is part of a larger commercial facility (Marriott Hotel) that serves visitors to the coast. Thus, although currently operated as a private tennis club serving only members and guests of the Newport Beach Marriott Hotel, the club is nevertheless a visitor-serving recreational offering. In addition, the hotel is located in close proximity to popular visitor destinations, such as the Newport Dunes, Balboa Island and the beach. The site is located in a highly visible, well-traveled location and could potentially support some form of commercial and/or recreational development in the future. Re-designation of the site for residential development now results in lost future opportunity for expanded, enhanced or even lower cost visitor-serving uses at the site.

The City states that the loss of this visitor-serving commercial site as a result of the requested amendment would not significantly reduce the amount of visitor-serving land in the City. The City concludes that the project represents a 2% reduction in visitor serving uses based on a table showing the portion of land currently designated as visitor serving commercial and what will remain after the 4.25-acre site is re-designated. The table is replicated below.

Visitor Serving Commercial Designation	Amount of Land
CV-A (0.5—0.75)	7.65 acres
CV-B (0.5—1.25)	42.90 acres
Newport Coast Planned Community	153.00 acres
CITYWIDE TOTAL:	203.55 acres
Less project	-4.25 acres
REMAINING CITYWIDE TOTAL:	199.30 acres
	(2% loss of CV-B)

The City included the Newport Coast Planned Community in the above-referenced tabulation. However, Newport Coast is covered by a segment of the County of Orange certified LUP and is not within the boundary of the City of Newport Beach certified LUP. As such, the 153.00 acres of visitor serving commercially designated area referred to in the table is not covered by the LUP that is the subject of the current amendment request. In actuality, the 4.25-acre loss represents an 8.4% $[4.25/(7.65+42.90)]$ --not 2%-- reduction in visitor-serving land in the portion of the City covered by this LUP.

In addition, the subject site is one of only five sites designated Visitor-Serving Commercial (CV) in the City's certified LUP. Many land uses that are in fact visitor-serving are located within the General Commercial (CG) or Neighborhood Commercial (CN) designation and could thus cease to provide a visitor-serving function. According to the LUP, *[t]he CV designation is intended to provide for accommodations, goods, and services intended to primarily serve the needs of visitors of Newport Beach.* Hotels, and their ancillary development, clearly fit this designation and should be protected consistent with Section 30222 of the Coastal Act. The LUP includes policies that encourage visitor-serving and recreational developments that provide public recreational opportunities. Although the tennis courts are part of a private club, they are available for use by hotel guests. Hotel guests are typically members of the public that are visitors to the area.

The agent for the corresponding CDP application states that the tennis courts are underutilized and replacing the courts *"does not remove a publicly accessible, widely-used recreation facility from the coastal zone."* The Commission acknowledges that the property owner is in no way obligated to retain the tennis court use of the site. However, under the current land use designation, the site can only be developed with uses allowed under the CV designation. Commercial development of the site could serve potential visitors to the coast. The location is conducive to commercial recreational development and consistent with the adjacent hotel use and the nearby commercial development. Residential development at the subject site would serve no purpose to members of the visiting public and could potentially establish a precedent for residential conversions in the other CV designated areas.

As submitted, the proposed land use conversion proposed as Part A of the City's amendment request is inconsistent with Section 30213 of the Coastal Act, which requires lower cost visitor and recreational facilities be *"protected, encouraged, and, where feasible, provided."* The proposed amendment will also have an adverse affect on the priority *"visitor-serving commercial recreational facilities"* to be provided under

Section 30222 of the Coastal Act. Therefore, Part A of the amendment must be denied, as submitted.

C. Findings for Approval with Suggested Modifications

The Commission hereby finds and declares as follows:

Coastal Act Policies

As stated previously, the Coastal Act is the standard of review in the current analysis. The Coastal Act encourages the provision of lower cost visitor and recreational facilities and prioritizes visitor-serving commercial development over residential development. The proposed LUP amendment is not in conformity with the public access and recreation policies of the Coastal Act relating to the provision of visitor serving development. Applicable provisions of the Coastal Act include the following:

Section 30213 states, in pertinent part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30222 states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Applicable Land Use Plan Policies from the certified Coastal Land Use Plan

2.3.1-3 *On land designated for visitor-serving and/or recreational uses, give priority to visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation over other commercial uses, except for agriculture and coastal-dependant industry.*

2.3.3-3 *Encourage visitor-serving and recreational developments that provide public recreational opportunities.*

Mitigation to Replace the Loss of Visitor-Serving Recreation

In order for the proposed land use conversion from Visitor-Serving Commercial to Medium Density Residential to be found consistent with the Coastal Act, it must be appropriately mitigated since the proposed land use change would allow for residential development on the subject property, which is not a priority use within the Coastal Zone. The proposed amendment is a project specific request. A corresponding coastal

development permit application (5-07-085) for the construction of condominiums at this location has been submitted and will be considered at a subsequent hearing. It should be noted that with this corresponding project, Marriott's property would not lose any entitlement to the 611 rooms allowed on the site (currently, according to the applicant, there are 532 rooms with a 75% occupancy).

Ideally, the loss of area designated for visitor serving uses should be offset by re-designating some other equivalent or superior area within the City that is designated with a low priority land use, to a visitor serving use. The applicant (Lennar) for the corresponding coastal development permit application undertook an extensive search for potential visitor-serving properties within the coastal zone in Newport Beach to mitigate for the change in land use. In reviewing sites of similar size, the applicant determined that no properties were suitable, the result of Newport Beach being nearly built-out. In addition, the applicant determined that the acquisition of individual parcels totaling 4.25 acres was not an attractive prospect; while residential property could be acquired, this would result in sporadic rezoning, incompatible uses adjacent to existing uses and proved economically unfeasible given the property values in Newport Beach.

As a result, Lennar, in consultation with the City, proposed an alternative; to pay a fee to mitigate for the loss of visitor-serving land. The proposal is to provide funding for the protection, enhancement and provision of lower-cost visitor-serving uses at Crystal Cove State Park in the amount of \$5,000,000.00 (five million dollars). This mitigation fee would off-set the loss of the priority land use in Newport Center and provide funding for Phase 2 of the ongoing effort by State Parks and their concessionaire, Crystal Cove Alliance, to restore the Historic District within Crystal Cove State Park. Phase 2 is presently contemplated to include the completion of the Outdoor Educational Commons (Cottages 40, 42, 43 and 44), the Beach Museum (Cottage 13), overnight accommodations in Cottage 5, Cottage 45, and the garages and creek restoration (Exhibit 6). Therefore, the Commission is requiring a suggested modification that would implement this alternative. Suggested Modification #1 would require the City to add a new Land Use Plan policy that requires a payment of a fee to mitigate for the loss of visitor-serving land. The policy includes provisions to adjust the mitigation fee to account for inflation. Implementation of the mitigation requirement would be carried out through the coastal development permit process.

The Crystal Cove Historic District is a 12.3-acre coastal portion of the 2,791-acre Crystal Cove State Park, which is located along the southeast coast of the City of Newport Beach. The federally listed Historic District is an enclave of 46 vintage rustic coastal cottages originally built in the 1920's and 1930's nestled around the mouth of Los Trancos Creek. It is one of the last remaining examples of early 20th century Southern California coastal development.

California State Parks has completed Phase I of the restoration of the Historic District, which provides cottages for visitor services, educational and community programs, a restaurant, and 13 cottages for overnight use by the public. Cottages available for

overnight rental include studios, one- and two-bedroom houses, and hostel-style dormitories.

Restoration of these historic cottages represents a significant opportunity for lower cost visitor-serving accommodations and associated educational and visitor uses at Crystal Cove State Park, which has become a popular destination of statewide significance for the public, especially since some of the cottages became available for overnight use. Only 22 of the 46 historic cottages have been restored to date. Crystal Cove Alliance, the non-profit cooperating association and concessionaire benefiting Crystal Cove State Park, is currently raising funds to restore the remaining 24 cottages for visitor-serving and overnight accommodation uses. With funding, restoration can begin immediately.

Revised Coastal Land Use Plan Map

Since the proposed amendment would change the land use designation of the 4.25 acre site, the Coastal Land Use Plan Map would need to be updated. Therefore, the Commission is requiring suggested modification #2, which would require the City to submit a revised Coastal Land Use Plan Map (i.e. that map referenced in Chapter 2, subsection 2.1.2 of the Coastal Land Use Plan), which reflects the land use change approved by the Commission through this amendment.

Conclusion

The proposed amendment, as modified through the suggested modifications, is consistent with Section 30213 of the Coastal Act, which requires lower cost visitor and recreational facilities be "*protected, encouraged, and, where feasible, provided.*" In addition, the proposed amendment, as modified through the suggested modifications, would not have an adverse effect on the priority "*visitor-serving commercial recreational facilities*" to be provided under Section 30222 of the Coastal Act.

VII. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with a local coastal program (LCP). The Commission's Local Coastal Program review and approval procedures have been found by the Resources Agency to be functionally equivalent to the environmental review process. Thus, under Section 21080.5 of CEQA, the Commission is relieved of the responsibility to prepare an environmental impact report for each local coastal program submitted for Commission review and approval. Nevertheless, the Commission is required when approving a local coastal program to find that the local coastal program does conform with the provisions of CEQA. As part of the City's review of this project, a Mitigated Negative Declaration (MND) was prepared for the proposed project and found that with mitigation, the project's environmental impacts would be reduced to less than significant levels.

CITY OF NEWPORT BEACH CITY COUNCIL STAFF REPORT

Agenda Item No. S23
July 24, 2007

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Robin Clauson, City Attorney
(949) 644-3131, rclauson@city.newport-beach.ca.us

Sharon Wood, Assistant City Manager
(949) 644-3222, swood@city.newport-beach.ca.us

SUBJECT: Affordable Housing Implementation Plan and Memorandum of Understanding
Santa Barbara Condominiums (PA2004-169)

ISSUES:

1. Should the Santa Barbara Condominium project be subject to the policies in the 2006 Housing Element and Ordinance No. 2007-6 regarding development agreements?
2. Is payment of \$5,000,000 to the City an appropriate public benefit in consideration for application of the 2006 Housing Element and vesting of development rights?

RECOMMENDATION:

1. Adopt the attached Resolution Approving an Affordable Housing Implementation Plan (AHIP) for Lennar Homes Santa Barbara Condominiums and a Memorandum of Understanding Between Lennar Homes of California, Inc. and City of Newport Beach (PA2004-169).

DISCUSSION:

On January 10, 2006, the City Council approved an application made by Lennar Homes for the development of 79 condominiums on a 4.25-acre site that presently is developed with an outdoor tennis complex operated by the Newport Beach Marriott Hotel located at 900 Newport Center Drive.

Affordable Housing:

The Resolution approving the project includes the following condition with regard to affordable housing.

5. The applicant shall provide a minimum of 20% of the total units (16 units) for affordable income households in accordance with Housing Programs 2.2.1 and 2.2.3 of the Newport Beach Housing Element. The applicant shall enter into an agreement with the City to provide said units, which

units may be provided off-site, at an approved location within the City. These units shall be identified in the agreement and constructed and completed prior to the issuance of any certificate of occupancy for the project. The agreement shall be reviewed and approved by the City Attorney and shall be executed and recorded prior to the recordation of the final tract map or the issuance of a building or grading permit for the proposed subdivision.

Lennar began working with City staff to meet the Housing Element requirement then in effect, that 20% of new units should be provided for lower income households, shortly after submittal of their application. After having no success in finding sites available to develop new affordable units, Lennar appeared before the City Council's Affordable Housing Task Force to discuss purchase of covenants on existing affordable units to extend the term of their affordability, and received Task Force support for that approach. Lennar identified one apartment complex with a covenant to expire in 2005, but was unsuccessful in reaching agreement with the apartment owner to extend the covenant. Lennar then explored payment of an in-lieu fee to the City, but the Housing Element specifically required the provision of units as the affordable housing requirement for projects with more than 50 units. Lennar's next effort was to identify existing market rate apartments, for which they could purchase covenants to convert them to affordable units. They investigated four properties that did not work out before finding Newport Courtyard and 1128-1142 Rutland Road, which is now proposed to meet their affordable housing requirement.

Newport Courtyard is a 12-unit apartment complex, and Condition 5 requires 16 affordable units. However, during the 17 months since City Council's approval of the Santa Barbara project (during which time Lennar has been seeking Coastal Commission approvals) the City adopted a new Housing Element as part of the General Plan update in 2006. Because of the opportunities for housing development that were added to the Land Use Element, the Housing Element was changed to set a goal 15% of all new units be affordable, and to require that an AHIP be prepared for projects with more than 50 units. The AHIP is to specify how the development will meet the City's affordable housing goal. Lennar appeared before the Affordable Housing Task Force again on May 22, 2007. The Task Force supported Lennar's compliance with the current Housing Element in satisfaction of Condition 5, specifically the purchase of covenants to restrict income and rent on the 12 units to moderate income levels for 30 years.

The attached AHIP describes the affordable housing project, renovations that will be completed, the income and rent limits that will be implemented, the term of the limits and compliance with the Housing Element. If the City Council approves the AHIP, an Affordable Housing Agreement among the City, Lennar and the property owner will incorporate the AHIP provisions and set forth additional details such as tenant screening and selection and annual monitoring. As required in Condition 5, this agreement will be reviewed and approved by the City Attorney and recorded prior to the recordation of the final tract map on the Santa Barbara project or the issuance of any permit for that project.

Memorandum of Understanding:

In addition to amending the Housing Element during the time that the Santa Barbara project was before the Coastal Commission, the City Council adopted an amendment to the Municipal Code regarding development agreements as one of many means of implementing the updated General Plan. Development agreements are now required for projects that require a legislative act (such as an LCP amendment) and include more than 50 residential units. The Santa Barbara project meets these criteria, and Lennar is willing to comply with the new development agreement

requirements, as they have requested that the City apply the new Housing Element provisions.

The proposed Memorandum of Understanding establishes the City's and Lennar's agreement to prepare a development agreement expeditiously, and outlines the provisions to be included in the development agreement. Those provisions are as follows:

1. Lennar will pay the City \$5,000,000 as part of the development agreement as a public benefit to the city. This amount is in addition to the \$5,000,000 mitigation fee imposed by the Coastal Commission that is the subject of Agenda Item 18.
2. The City will expeditiously review the Affordable Housing Agreement to implement the AHIP, and will provide expedited review of development plans for the Santa Barbara project.
3. City development approvals will be vested for five years.

ENVIRONMENTAL REVIEW:

A Mitigated Negative Declaration (MND) has been prepared for the proposed project in accordance with the implementing guidelines of the California Environmental Quality Act (CEQA). The document was made available for public review and comment during a 30-day review period from July 15 to August 15, 2005 and approved by the City Council on January 10, 2006.

Submitted by:

Robin Clauson
City Attorney

Sharon Wood
Assistant City Manager

Attachments: 1. City Council Resolution
 2. Affordable Housing Implementation Plan
 3. Memorandum of Understanding

RESOLUTION NO. 2007-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH APPROVING AN AFFORDABLE HOUSING IMPLEMENTATION PLAN AND MEMORANDUM OF UNDERSTANDING FOR THE SANTA BARBARA CONDOMINIUM PROJECT AT 900 NEWPORT CENTER DRIVE (PA2004-169)

WHEREAS, on January 10, 2006, the City Council adopted Resolution No. 2006-2, approving an application by Lennar Homes for the development of 79 condominium units at 900 Newport Center Drive; and

WHEREAS, the Resolution includes Condition 5, which establishes the requirements for the project to meet the affordable housing requirements in the City's Housing Element; and

WHEREAS, on July 25, 2006, the City Council approved a comprehensive update to the General Plan, including changes in affordable housing requirements under an updated Housing Element; and

WHEREAS, on March 27, 2007, the City Council adopted Ordinance No. 2007-6, amending provisions under which development agreements shall be required for residential projects to implement new policies and land use changes in the General Plan; and

WHEREAS, Lennar has requested approval of an Affordable Housing Implementation Plan that complies with the requirements of the updated Housing Element as satisfaction of Condition 5; and

WHEREAS, Lennar wishes to enter into a development agreement to comply with Ordinance No. 2007-6, vest its rights to develop the project as approved and establish a public benefit contribution to the City;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newport Beach hereby approves the Affordable Housing Implementation Plan for Santa Barbara Condominiums attached as Exhibit 1, and approves the Memorandum of Understanding Between Lennar Homes of California, Inc and City of Newport Beach attached as Exhibit 2.

Passed and adopted at a regular meeting of the City Council of the City of Newport Beach held on July 24, 2007.

MAYOR

ATTEST:

CITY CLERK

**Lennar Homes
Santa Barbara Condominiums**

Affordable Housing Implementation Plan

City of Newport Beach, CA

July 24, 2007

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I. Executive Summary

In January 2006 the City of Newport Beach approved a General Plan Amendment, Coastal Land Use Plan Amendment and Planned Community Text for a project being proposed by Lennar Homes. The project consists of 79 market rate single-family condominiums in Newport Center, adjacent to the Newport Beach Marriott on the former tennis court site. Condition 5 of the City Council Resolution approving the project establishes the affordable housing requirement for the project, as follows:

The applicant shall provide a minimum of 20% of the total units (16 units) for affordable income households in accordance with Housing Programs 2.2.1 and 2.2.3 of the Newport Beach Housing Element. The applicant shall enter into an agreement with the City to provide said units, which units may be provided off-site, at an approved location within the City. These units shall be identified in the agreement and constructed and completed prior to the issuance of any certificate of occupancy for the project. The agreement shall be reviewed and approved by the City Attorney and shall be executed and recorded prior to the recordation of the final tract map or the issuance of a building or grading permit for the proposed subdivision.

Background

The City of Newport Beach's Housing Element as approved by the City Council in July, 2006, after approval of the Lennar project, includes an amended Housing Program 2.2.1, which sets the goal that 15% of all new housing units in the city be affordable to very low-, low- and moderate-income households. Projects with more than 50 units are required to prepare an Affordable Housing Implementation Plan (AHIP) that specifies how the development will meet the City's affordable housing goal.

City Process

Upon submittal of the Santa Barbara Condominium project to the city, Lennar began working with the city staff to evaluate scenarios to comply with the Housing Element. Due to the lack of available land in Newport Beach, Lennar gained conceptual consent of the City Council's Affordable Housing Task Force to purchase covenants to restrict existing, market rate units to moderate-income households and rents affordable to them.

Summary

After extensive research on options for meeting the affordable housing requirements, meeting with the Affordable Housing Task Force, and in consideration of the newly adopted Housing Element requirement for 15% of all new units to be affordable, Lennar agrees to meet the requirements of the City Council condition of approval and the July 2006 Housing Element as described below.

II. Affordable Housing Project Description

The Newport Courtyard Apartments at 1128 – 1142 Rutland Road, Newport Beach is an existing, market rate, 12-unit apartment complex. Lennar will satisfy its affordable housing requirement through the purchase and recordation of covenants that restrict the occupancy of the apartments to qualifying moderate-income households, and restrict the rental rates as affordable to these households, for 30 years. An Affordable Housing Agreement among the City of Newport Beach, Lennar and the property owner shall be executed and recorded prior to the recordation of the final tract map or the issuance of a building or grading permit for the Lennar project.

Unit Descriptions

The apartment complex consists of two separate buildings that face a common courtyard area that features a swimming pool. Each building contains six units and a laundry room. The units are generously sized at approximately 1,100 square feet. The apartments all contain two bedrooms and two bathrooms and a dining area. Each unit has one assigned carport. While the units were built in 1961, the owner is currently undertaking a significant renovation effort to upgrade the complex.

Renovations

Comprehensive renovations to the property to make the complex comparable with more recently constructed projects and ensure that it provides viable housing opportunities for the term of the covenants will be completed prior to the issuance of any certificate of occupancy for the Lennar project, as required by the City Council condition of approval. The renovations will include the following:

Buildings/Common Areas

- Recovering of the existing stucco on the building façade with Hardiplank Select Cedarmill Siding
- Complete replacement of all roof materials
- Exterior repainting of the entire complex, including the iron handrails
- Installation of new vertical wrought iron pickets between the existing pickets on the railings in the courtyard area
- Installation of new redwood fencing on the back side of both buildings, enclosing rear patio/porch areas
- Replacement of fences enclosing patio areas for each unit adjacent to the common courtyard with lower landscape shrubs to allow visibility and openness in the courtyard area for each apartment
- Renovation of both laundry rooms to include:
 - New 30 gallon electric water heaters and non-burst water supply lines
 - New countertop for folding clothes
 - New vinyl flooring, windows and doors
- Installation of new motion detecting light fixtures in the garage area
- Replacement of concrete in the central common area with pavers throughout the courtyard
- New landscaping throughout the property

Units

Kitchens

- Complete kitchen remodel of two units with new appliances, countertops, cabinets and sinks
- Replacement of seven-year old appliances with new ones in two units
- Maintenance of appliances less than three years old in eight units

Bathrooms

- Replacement of all toilets with new, low-flow toilets
- Replacement of all shower heads with new, low-flow shower heads

Windows and Doors

- Installation of new vinyl windows and sliding glass doors
- Installation of new Dutch style front doors in all 12 units

Walls and Floors

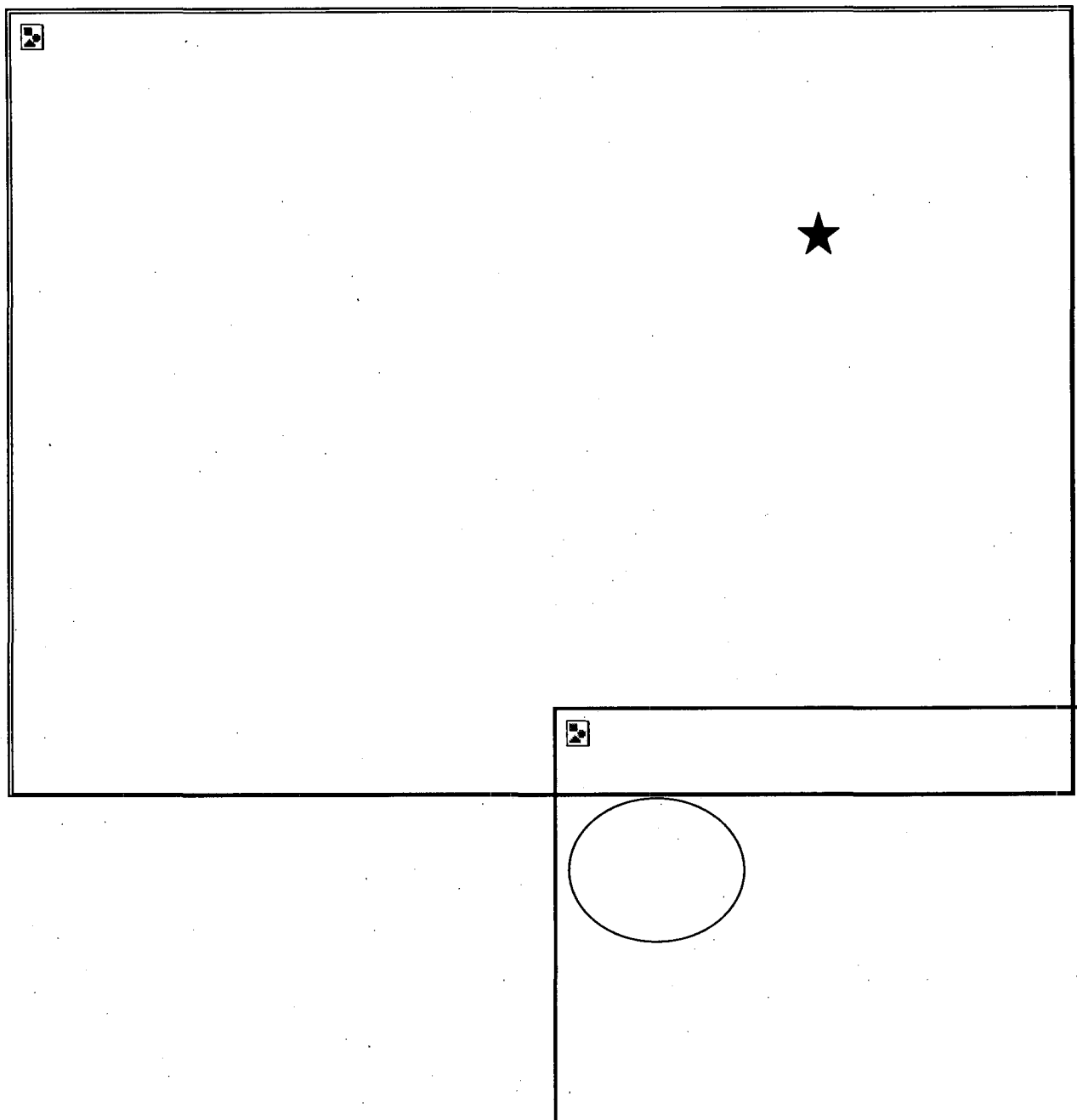
- Repainting of all units' interiors
- Installation of new carpet in each unit

Maintenance

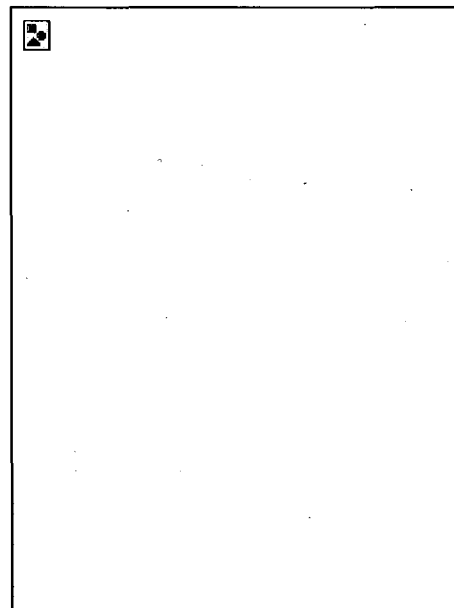
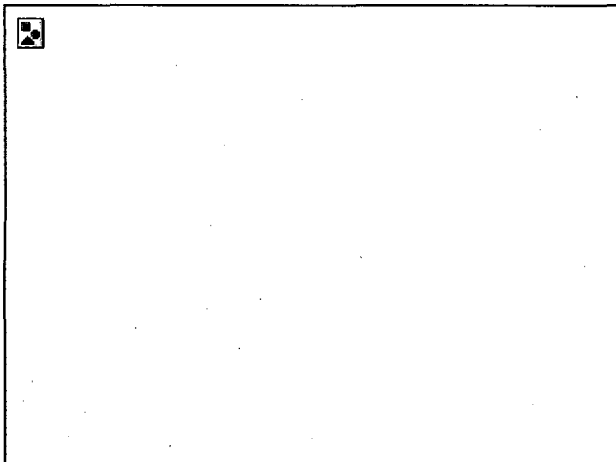
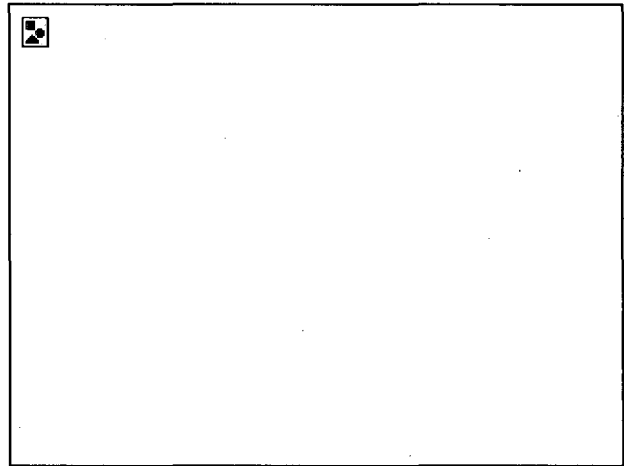
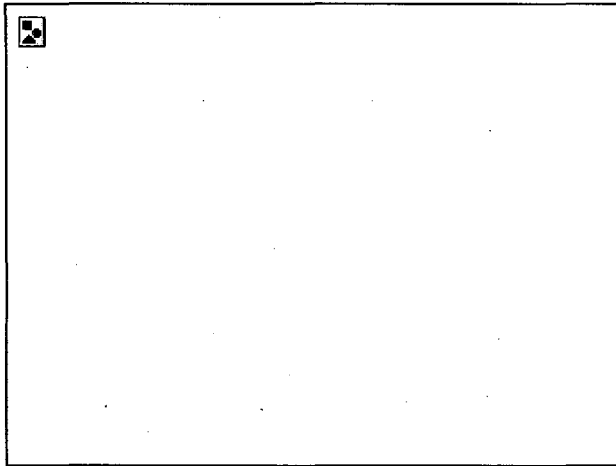
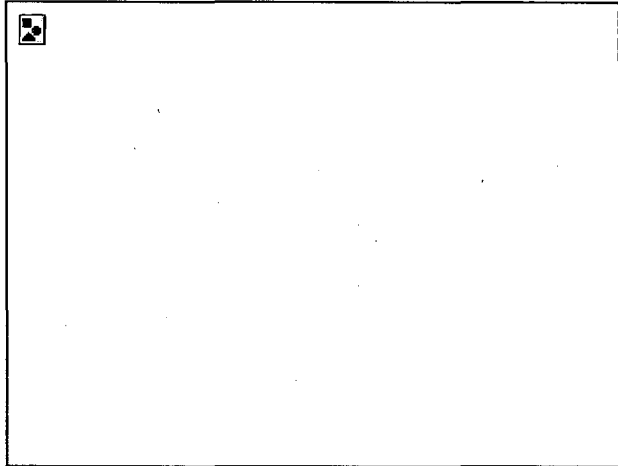
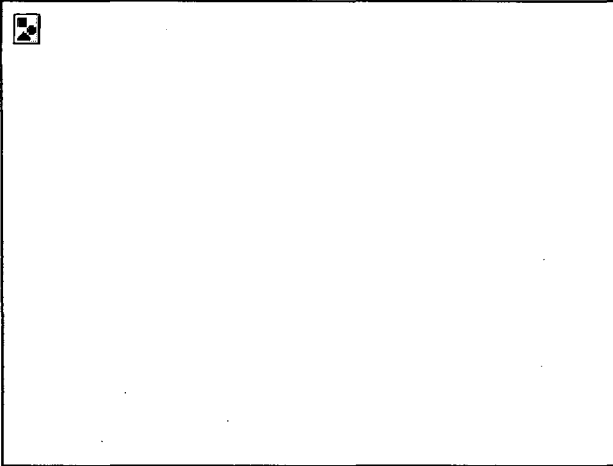
The property will be maintained and preserved in good condition, in good repair, and in a decent, safe, sanitary, habitable and tenantable condition. All units will be fit for occupation by human beings and substantially comply with state and local building and health codes. At a minimum, all rental units shall have the following:

- Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors
- Plumbing facilities in good working order, including hot and cold running water, kitchen sink, working toilet, wash basin, and bathtub or shower, connected to a sewage disposal system
- Gas facilities in good working order
- Heating facilities in good working order
- An electric system, including lighting, wiring, and equipment, in good working order
- Clean and sanitary buildings, grounds, and appurtenances (for example, courtyard, swimming pool and carports), free from debris, filth, rubbish, garbage, rodents, and vermin
- Adequate trash receptacles in good repair
- Floors, stairways, and railings in good repair
- Safe fire or emergency exits leading to a street or hallway
 - Stairs, hallways, and exits kept litter-free
 - Storage areas, garages, and basements kept free of combustible materials
- Operable deadbolt locks on the main entry doors of rental units, and operable locking or security devices on windows
- Working smoke detectors in all units and in common stairwells
- Ground fault circuit interrupters for swimming pools and antisuction protections

Project Location Map



Site Photos



III. Consistency with Housing Element

The City of Newport Beach completed a comprehensive General Plan update in 2006. The Housing Element was included in the update to ensure consistency with the updated Land Use Element.

The Housing Element details a number of goals for the City, which include the following: promoting quality residential development through application of sound planning principles and policies that encourage preservation, conservation, and appropriate redevelopment of housing stock; providing a balanced residential community that contains a variety of housing types, designs and opportunities for all economic segments of the community; extension of affordability covenants with owners of existing affordable apartments; preserving and increasing housing affordability, through rental housing, for very low- and low-income households; and providing housing for special needs groups.

The affordable housing apartment complex achieves a number of the above goals, including promoting quality residential development, preserving and increasing housing affordability and contributing to a balanced residential community through rental housing. By converting 12 existing, market rate rental units exclusively for Moderate Income Households for 30 years, the project increases housing affordability in the City and preserves rental housing that might otherwise be converted to condominiums.

The affordable housing apartment complex is consistent with a number of the goals and policies in the Housing Element. Listed below is a matrix of where the Housing Element and project are consistent

Goal	Project Consistency
H 1 Quality residential development and preservation, conservation, and appropriate redevelopment of housing stock	Project renovates and preserves an existing apartment community in Newport Beach and adds deed restrictions to all 12 units for 30 years to restrict rental to qualifying moderate income households
H 3 Housing opportunities for as many renter and owner occupied households as possible in response to the demand for housing in the city	Project provides for 12 additional rental units available to Moderate Income Households

IV. Income and Rent Limits

The Newport Courtyard Apartments at 1128 – 1142 Rutland Road, Newport Beach will be restricted for rent by qualifying households. In order to meet the minimum eligibility requirements the units must be rented to households qualifying as Moderate Income Households.

Moderate Income Households will have income that does not exceed 120% of the Orange County ("County"), California annualized median family income ("Moderate Income") as then currently published by the United States Department of Housing and Urban Development ("HUD") for the County based on four (4) person households, as the same may be adjusted from time to time. -

Rent shall not exceed thirty percent (30%) of the income limit.

Appendix A
City of Newport Beach Resolution of Approval

[TO BE INSERTED]

**MEMORANDUM OF UNDERSTANDING BETWEEN LENNAR HOMES
OF CALIFORNIA, INC. AND CITY OF NEWPORT BEACH**

This Memorandum of Understanding ("MOU") is entered into by and between Lennar Homes of California, Inc., ("Lennar") and the City of Newport Beach (City), a municipal corporation, through its duly elected, appointed, qualified or acting representatives.

RECITALS

A. WHEREAS, on January 10, 2006 the Newport Beach City Council approved Resolution NO. 2006-2 adopting Mitigated Negative Declaration (SCH NO. 2005-071067) and approved General Plan Amendment No. 2004-005, Local Coastal Program Land Use Plan Amendment No. 2005-001, Tentative Parcel Map No. 2005-014, Tentative Tract Map No. 2004-004 (16774), Traffic Study No. 2005-002 and Coastal Residential Development Permit No. 2005-004 and adopted Ordinance No. 2006-1 approving Planned Community Development No. 2005-003 amending Zoning District Map No. (48) changing the subject property from CV-B to RM-C for property located at 900 Newport Center Drive (PA 2004-169); and

B. WHEREAS, on July 25, 2006 the City Council approved a comprehensive update of the City's General Plan, including changes in Affordable Housing Requirements under an updated Housing Element; and

C. WHEREAS, on March 27, 2007, the City Council adopted Ordinance No. 2007-6, amending provisions under which development agreements shall be required for residential development projects in the City to implement new policies and Land Use changes in the new General Plan and requiring development agreements for projects that require a legislative act and include more than 50 units; and

D. WHEREAS, on July 10, 2007 the California Coastal Commission approved City of Newport Beach Land Use Plan Amendment NPB-MAJ-1-06 Part A (Marriott Hotel VSC to MDR/Santa Barbara Condominiums) subject to modifications; and

E. WHEREAS, Lennar has requested approval of an Affordable Housing Implementation Plan (AHIP) which documents Lennar's commitment to the provision of 12 apartment units in the Moderate Income level for a period of 30 years and which will satisfy the intent of Condition No. 5 of Resolution No. 2006-2 for affordable housing; but will comply with the amended requirements for number of units of affordable housing under the updated Housing Element.

F. WHEREAS, concurrent with and as consideration for the approval of the AHIP under the provisions of the updated Housing Element, the two parties wish to enter into a development agreement to vest the right to develop the project without additional public benefit

contributions other than payment to the City of Newport Beach the amount of \$5 million for the City to use for projects that provide a public benefit to the City as determined by the City Council.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

Section 1. The City shall give prompt consideration to the necessary support language for Coastal Commission approval of the Coastal Development Permit, and to the Affordable Housing Implementation Plan (AHIP) required by the current Housing Element.

Section 2. The parties will expeditiously prepare and the Newport Beach Planning Commission and City Council will promptly consider approval of a development agreement that includes the following principal provisions. The development agreement must be approved and executed before the issuance of any grading or building permit for the project.

A. As a condition of the development agreement, Lennar shall pay \$5 million to the City of Newport Beach. This amount shall be paid in two installments, \$2 million to be delivered concurrently with the issuance of the first residential building permit and \$3 million to be delivered concurrently with the issuance of the final occupancy permit for all 79 homes. If the certificate of occupancy for the 79th unit is not issued within in 12 months of the first certificate of occupancy then the \$3 million shall be due on a pro rata per unit basis for those units for which a certificate of occupancy has been issued and payable on a pro rata basis for the ensuing units as each certificate of occupancy is issued. Upon payment of this amount, no other payment shall be required for public benefit to the City of Newport Beach.

B. The City will expeditiously review the Affordable Housing Agreement to implement the AHIP, and will provide expedited review of development plans for the project, in support of timely receipt of building permits and final occupancy permits.

C. City development approvals will be vested for a period not to exceed five (5) years.

Section 3. The terms of this MOU shall become effective upon execution by both parties and shall continue thereafter until the satisfactory completion of the obligations of the parties as described herein. The MOU may be altered, changed, or amended by mutual consent of the parties. Any changes or amendments must be in writing and signed by the parties before such change or amendment shall take effect.

Section 4. The MOU is executed in counterparts, each of which shall be considered a duplicate original.

Section 5. Notices: Any demand upon or notice required or permitted to be given by one party to the other shall be in writing, shall be made in the following manner, and shall be effective (a) upon receipt if given by personal delivery, (b) on the date indicated on the receipt if given by certified or registered mail, return receipt requested, or (c) on the succeeding business day after mailing or deposit if given by Express Mail or by deposit with a private delivery service of general use (e.g. Federal Express), postage or fee paid, as appropriate, addressed to the parties in Paragraph 17. Notice of a change of address shall be given by written notice in the manner set forth in this section.

Section 6. For the purposes of this MOU, all information, requests, or other business including any demand upon a party or notice pursuant hereto shall be coordinated through the following

agency representatives:

City of Newport Beach
Homer Bludau, City Manager 3300
Newport Blvd.
Newport Beach, CA 92658-8915

Lennar Homes of California, Inc.
Mr. John Baayoun
Regional Vice President
25 Enterprise
Aliso Viejo, CA 92656

Section 7. This MOU shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.

Section 8. This MOU shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

APPROVED AS TO FORM:

CITY OF NEWPORT BEACH,
A Municipal Corporation

By: _____
Robin Clauson
City Attorney

By: _____
Steven Rosansky
Mayor

ATTEST:

Lennar Homes of California, Inc.

By: _____
LaVonne Harkless
City Clerk

By: _____
John Baayoun
Regional Vice Presiden

EXHIBIT 7



CHAPTER 3 Land Use Element



Land Use Element

Table LU2 Anomaly Locations

Anomaly Number	Statistical Area	Land Use Designation	Development Limit (sf)	Development Limit (Other)	Additional Information
1	L4	MU-H2	460,095	471 Hotel Rooms (not included in total square footage)	
2	L4	MU-H2	1,052,880		
2.1	L4	MU-H2	18,810		11,544 sf restricted to general office use only (included in total square footage)
3	L4	CO-G	734,641		
4	L4	MU-H2	250,176		
5	L4	MU-H2	32,500		
6	L4	MU-H2	46,044		
7	L4	MU-H2	81,372		
8	L4	MU-H2	442,775		
9	L4	CG	120,000	164 Hotel Rooms (included in total square footage)	
10	L4	MU-H2	31,362	349 Hotel Rooms (not included in total square footage)	
11	L4	CG	11,950		
12	L4	MU-H2	457,880		
13	L4	CO-G	288,264		
14	L4	CO-G/MU-H2	860,884		
15	L4	MU-H2	228,214		
16	L4	CO-G	344,231		
17	L4	MU-H2	33,292	304 Hotel Rooms (not included in total square footage)	
18	L4	CG	225,280		
19	L4	CG	228,530		
21	J6	CO-G	687,000		Office: 660,000 sf; Retail: 27,000 sf
		CV		300 Hotel Rooms	
22	J6	CO-G	70,000		Restaurant: 8000 sf, or Office: 70,000 sf
23	K2	PR	15,000		
24	L3	IG	89,624		
25	L3	PI	84,585		
26	L3	IG	33,940		
27	L3	IG	86,000		
28	L3	IG	110,600		
29	L3	CG	47,500		
30	M6	CG	54,000		
31	L2	PR	75,000		
32	L2	PI	34,000		
33	M3	PI	163,680		Administrative Office and Support Facilities: 30,000 sf Community Mausoleum and Garden Crypts: 121,680 sf Family Mausoleums: 12,000 sf
34	L1	CO-R	484,348		
35	L1	CO-R	199,095		
36	L1	CO-R	227,797		

Table LU2 Anomaly Locations

Anomaly Number	Statistical Area	Land Use Designation	Development Limit (sf)	Development Limit (Other)	Additional Information
37	L1	CO-R	131,201	2,050 Theater Seats (not included in total square footage)	
38	L1	CO-M	443,627		
39	L1	MU-H3	408,084		
40	L1	MU-H3	1,426,634	425 Hotel Rooms (included in total Square Footage)	
41	L1	CO-R	327,671		
42	L1	CO-R	286,166		
43	L1	CV		611 Hotel Rooms	
44	L1	CR	1,619,525	1,700 Theater Seats (not included in total square footage)	
45	L1	CO-G	162,364		
46	L1	MU-H3/PR	3,725	24 Tennis Courts	Residential permitted in accordance with MU-H3.
47	L1	CG	105,000		
48	L1	MU-H3	337,261		
49	L1	PI	45,208		
50	L1	CG	25,000		
51	K1	PR	20,000		
52	K1	CV		479 Hotel Rooms	
53	K1	PR	567,500		See Settlement Agreement
54	J1	CM	2,000		
55	H3	PI	119,440		
56	A3	PI	1,343,238	990,349 sf Upper Campus 577,889 sf Lower Campus	In no event shall the total combined gross floor area of both campuses exceed the development limit of 1,343,238 sq. ft.
57	Intentionally Blank				
58	J5	PR	20,000		
59	H4	MU-W1	247,402	144 Dwelling Units (included in total square footage)	
60	N	CV	2,660,000	2,150 Hotel Rooms (included in total square footage)	
61	N	CV	125,000		
62	L2	CG	2,300		
63	G1	CN	66,000		
64	M3	CN	74,000		
65	M5	CN	80,000		
66	J2	CN	138,500		
67	D2	PI	20,000		
68	L3	PI	71,150		
69	K2	CN	75,000		
70	D2	RM-D			Parking Structure for Bay Island (No Residential Units)
71	L1	CO-G	11,630		
72	L1	CO-G	8,000		
73	A3	CO-M	350,000		
74	L1	PR	35,000		

Table LU2 Anomaly Locations

Anomaly Number	Statistical Area	Land Use Designation	Development Limit (sf)	Development Limit (Other)	Additional Information
75	L1	PF			City Hall, and the administrative offices of the City of Newport Beach, and related parking, pursuant to Section 425 of the City Charter.
76	H1	CO-G		0.5 FAR	1.0 FAR permitted, provided all four legal lots are consolidated into one parcel to provide unified site design
77	H4	CV	240,000	157 Hotel Rooms (included in total square footage)	
78	B5	CM	139,840		
79	H4	CG		0.3/0.5	Development limit of 19,905 sq.ft. permitted, provided all six legal lots are consolidated into one parcel to provide unified site design

LU 4.2 Prohibition of New Residential Subdivisions

Prohibit new residential subdivisions that would result in additional dwelling units unless authorized by an amendment of the General Plan (GPA). Lots that have been legally merged through the *Subdivision Map Act* and City Subdivision Code approvals are exempt from the GPA requirements and may be re-subdivided to the original underlying legal lots. This policy is applicable to all Single Unit, Two Unit, and Multiple Unit Residential land use categories. (*Imp 6.1*)

LU 4.3 Transfer of Development Rights

Permit the transfer of development rights from a property to one or more other properties when:

- a. The donor and receiver sites are within the same Statistical Area.
- b. The reduced density/intensity on the donor site provides benefits to the City such as, but not limited to, the (1) provision of extraordinary open space, public visual corridor(s), parking or other amenities; (2) preservation of a historic building or property or natural landscapes; (3) improvement of the area's scale and development character; (4) consolidation of lots to achieve a better architectural design than could be achieved without lot consolidation; and/or (5) reduction of local vehicle trips and traffic congestion;
- c. The increment of growth transferred to the receiver site complements and is in scale with surrounding development, complies with community character and design policies contained in this Plan, and does not materially degrade local traffic conditions and environmental quality.
- d. Transfer of Development Rights in Newport Center is governed by Policy 6.14.3 (*Imp 2.1, 5.1, 10.2*)

CITY of NEWPORT BEACH
GENERAL PLAN
Figure LU13
STATISTICAL AREAS
F1, L1, L2, M1-M5

- Residential Neighborhoods**
- RS-D Single-Unit Residential Detached
 - RS-A Single-Unit Residential Attached
 - RT Two-Unit Residential
 - RM Multiple Unit Residential
 - RM-D Multiple-Unit Residential Detached
- Commercial Districts and Corridors**
- CN Neighborhood Commercial
 - CC Corridor Commercial
 - CG General Commercial
 - CV Visitor Serving Commercial
 - CM Recreational and Marine Commercial
 - CR Regional Commercial
- Commercial Office Districts**
- CO-G General Commercial Office
 - CO-M Medical Commercial Office
 - CO-R Regional Commercial Office
- Industrial Districts**
- IG Industrial
- Airport Supporting Districts**
- AO Airport Office and Supporting Uses
- Mixed -Use Districts**
- MU-V Mixed Use Vertical
 - MU-H Mixed Use Horizontal
 - MU-W Mixed Use Water Related
- Public, Semi-Public and Institutional**
- PF Public Facilities
 - PI Private Institutions
 - PR Parks and Recreation
 - OS Open Space
 - TS Tidelands and Submerged Lands
- City of Newport Beach Boundary**
- Statistical Area Boundary**
- Land Use Delineator Line**
- Refer to anomaly table**



EIP



CC Resolution No.	GPA No.	Project No.	Adopting Date	Description
2008-97	GP2008-009	PA2008-182	11/24/2008	City Hall Site - Change OS to PF and create Anomaly No. 75
2009-3	GP2007-008	PA2007-210	01/27/2009	Big Canyon - Parcel Map on portion of golf course - Change PR to RS-D
2010-108	GP2010-008	PA2010-052	09/14/2010	Change public beach portion of the property located at 1901-1911 Bayside Drive from PF to PR



CITY OF NEWPORT BEACH

STAFF APPROVAL NO. SA2004-009
(PA2004-084)

PLANNING DEPARTMENT
3300 NEWPORT BOULEVARD
NEWPORT BEACH, CA 92658
(949) 644-3200; FAX (949) 644-3229

Staff Person: Javier S. Garcia, 644-3206
Appeal Period: 14 days after approval date

May 11, 2004*

RECEIVED MAY 19 2004

Bob Shorb, Host Marriott
6903 Rockledge Drive, Suite 1500
Bethesda, MD 20817

APPLICATION: Staff Approval No. SA2004-009 (PA2004-084)

REQUEST: In conjunction with the proposed renovation and remodel of the existing Marriott Hotel, the applicant requests a review of the project changes for a determination by the Planning Director of substantial conformance with the existing approved Site Plan Review No. 29.

APPLICANT: Bob Shorb for Host Marriott, property owner

LOCATION: 900 NEWPORT CENTER DRIVE

Proposed Project:

The applicant proposes to renovate and remodel the hotel and reconfigure amenities within the facility as well as additions and demolition. The project remodel entails demolition of a portion of the hotel rooms and meeting rooms to construct two new meeting rooms on-site adjacent to Santa Barbara Drive. The gross square footage of the project will be less than the currently authorized 363,373 square feet and the number of hotel rooms will be reduced. The hotel is currently authorized 611 hotel rooms and currently operates 586. The total number of rooms will be reduced to 532 by combining existing rooms to create larger suites and the conversion of square footage to provide other hotel related amenities and facilities.

The project as proposed will eliminate an access drive aisle that provides access between the parking lot at the front of the property and the parking lot at the rear of the property. It is anticipated that additional directional signage will be provided to facilitate vehicular traffic in finding the project parking structure located at the Newport Center Drive side of the property and is discussed in detail in the appendix of this document.

Authority:

Section 20.92.080 A of the Newport Beach Municipal Code provides that the Planning Director may waive the requirement for a new or amended site plan review application. The waiver may be granted if the changes are minor, do not involve substantial alterations, an addition to the plan or the conditions of approval and are consistent with the intent of the original approval. The property is located in the APF District.

ACTION: Approved May 11, 2004.

Findings:

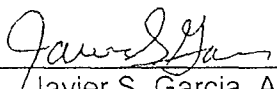
The Planning Director in approving this application reviewed the project with regard to the proposed change to the site plan, vehicular and pedestrian circulation and conformance with the approved site plan review. The proposed reduction in the number of hotel rooms results in a reduction in the overall parking requirement of the project and the site plan changes reduce the number of on site parking spaces. The detailed discussion can be found in the appendix of this document. In consideration of those aspects, the Planning Director determined in this particular case that the proposal, in accordance with 20.92.080 A of the Newport Beach Municipal Code, is a minor change that does not necessitate the filing of a new or amended use permit or site plan review application. Additionally, the Planning Director hereby waives the requirement for the filing of a new or amended application for the site plan review. The Planning Director made the determination based on the following findings:

1. The project as proposed is consistent with the Land Use Element of the General Plan and the Local Coastal Program and limits the site to a maximum of 611 hotel rooms. The Land Use Element of the General Plan and the Local Coastal Program do not limit the gross square footage or building footprint of the project. Additionally, the size of the facility will be less than that previously approved by Site Plan Review No. 29.
2. This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities) and Class 2 (Replacement or Reconstruction).
3. The reduction in the number of hotel rooms and the proposed facilities addition reduces the number of required parking spaces and the new configuration will provide the number of on-site parking spaces required by the current site plan review approval (1.31 parking spaces for each guest room).
4. The remodel entails demolition of a portion of the hotel rooms and meeting rooms, the construction of an expanded lobby, addition of meeting rooms adjacent to the Santa Barbara Drive side of the property and other amenities and facilities related to the hotel operation.
5. The hotel is currently authorized 611 hotel rooms and currently operates 586. The total number of rooms will be reduced to 532 by combining existing rooms to create larger suites and to provide other hotel related amenities and facilities.
6. The site plan review does not establish specific required setbacks measured from the street or a specific building footprint or size.
7. The total percentage of compact parking spaces provided will not exceed 25% of the available parking pool.

Conditions:

1. Development shall be in substantial conformance with the approved site plan, floor plan and elevations. Any deviation from the plans submitted and approved by this action may require separate review and approval to determine substantial conformance with this approval.
2. All applicable conditions of approval of Site Plan Review No. 29 shall remain in force.
3. The use or provision of compact parking (maximum of 25% of the total parking provided) shall be in accordance with the conditions of approval for Site Plan Review No. 29.
4. The parking and circulation system for vehicular and pedestrian traffic shall be reviewed and approved by the City Traffic Engineer prior to issuance of building permits. All work within the public right-of-way shall be performed under an encroachment permit issued by the Public Works Department.
5. Prior to issuance of the building permits for the proposed renovation and remodel, a revised architectural site plan and floor plans of the approved plans shall be forwarded to the Planning Department for inclusion into this staff approval file.
6. The Planning Director or the Planning Commission may add to or modify conditions of approval to this use permit, or revoke this permit upon a determination that the operation, which is the subject of this approval, causes injury, or is detrimental to the health, safety, peace, morals, comfort, or general welfare of the community.

PATRICIA L. TEMPLE, Planning Director

By 
Javier S. Garcia, AICP
Senior Planner

F:\USERS\PLN\SHARED\PA\S\PAS - 2004\PA2004-084\SA2004-009 APPR.DOC

Attachments: Appendix
Vicinity Map
Letter from Applicant
Describing the Request
Site Plan and Floor Plan
(available for review in Planning Dept.

property owner:
Host Marriott
6903 Rockledge Drive, Suite
1500
Bethesda, MD 20817

cc:

APPENDIX

Use Permit

The original use permit was related to the use of a portion of the hotel facilities for recreational and electronic games. This use permit was not exercised within 24 months of the effective date of the Planning Commission or City Council action. Therefore, the use permit is null and void.

A determination of substantial conformance with the project approved by Use Permit No. 2095 is not necessary since it was not exercised and was allowed to expire.

Site Plan Review

Section 20.92 establishes the purpose and procedures for the site plan review. At its meeting of February 14, 1983, the Planning Commission reviewed and approved General Plan Amendment 81-3, Traffic Study, Site Plan Review No. 29 and Use Permit No. 2095. The site plan review was approved to establish the project site plan with the existing building location and parking lot layout.

A determination of substantial conformance with Site Plan Review No. 29 is subject to review and approval by the Planning Director in accordance with Section 20.92.080 A of the Newport Beach Municipal Code. The Planning Director has determined that the project as proposed is not in substantial conformance with the approved Site Plan Review No. 29. However, the Planning Director has determined that the project as proposed to allow:

- Demolition of portions of the existing hotel structures, including hotel rooms;
- Relocation and addition of meeting rooms and other hotel amenities;
- Site plan alterations to the parking lot;
- Site plan alterations to the access driveways and circulations aisles,

are minor changes that do not necessitate the filing of a new site plan review application. The Planning Director has also determined that the proposed changes do not alter or modify any existing conditions of approval of the original approval based on the following review.

Site Plan Changes

The proposed changes to the site plan are functional changes to reconfigure hotel amenities and reduce the number of hotel rooms. Approximately 42 rooms will be demolished between the South Tower and the South Wing of the facility and will be replaced by an enhanced garden and landscape area. The main lobby will be enlarged and reconfigured and new meeting rooms will be located on the Santa Barbara Drive side of the property and extend to within 7-feet of the property line (the existing building maintains a setback of 25-feet). There are no minimum setback distances specified by the Site Plan Review No. 29, therefore, staff has determined that the change is a minor site plan alteration that does not justify the filing of a new application.

The location of the new meeting rooms will result in the loss of an existing drive aisle that connects the front and rear parking lots of the project. The vehicular circulation is discussed below.

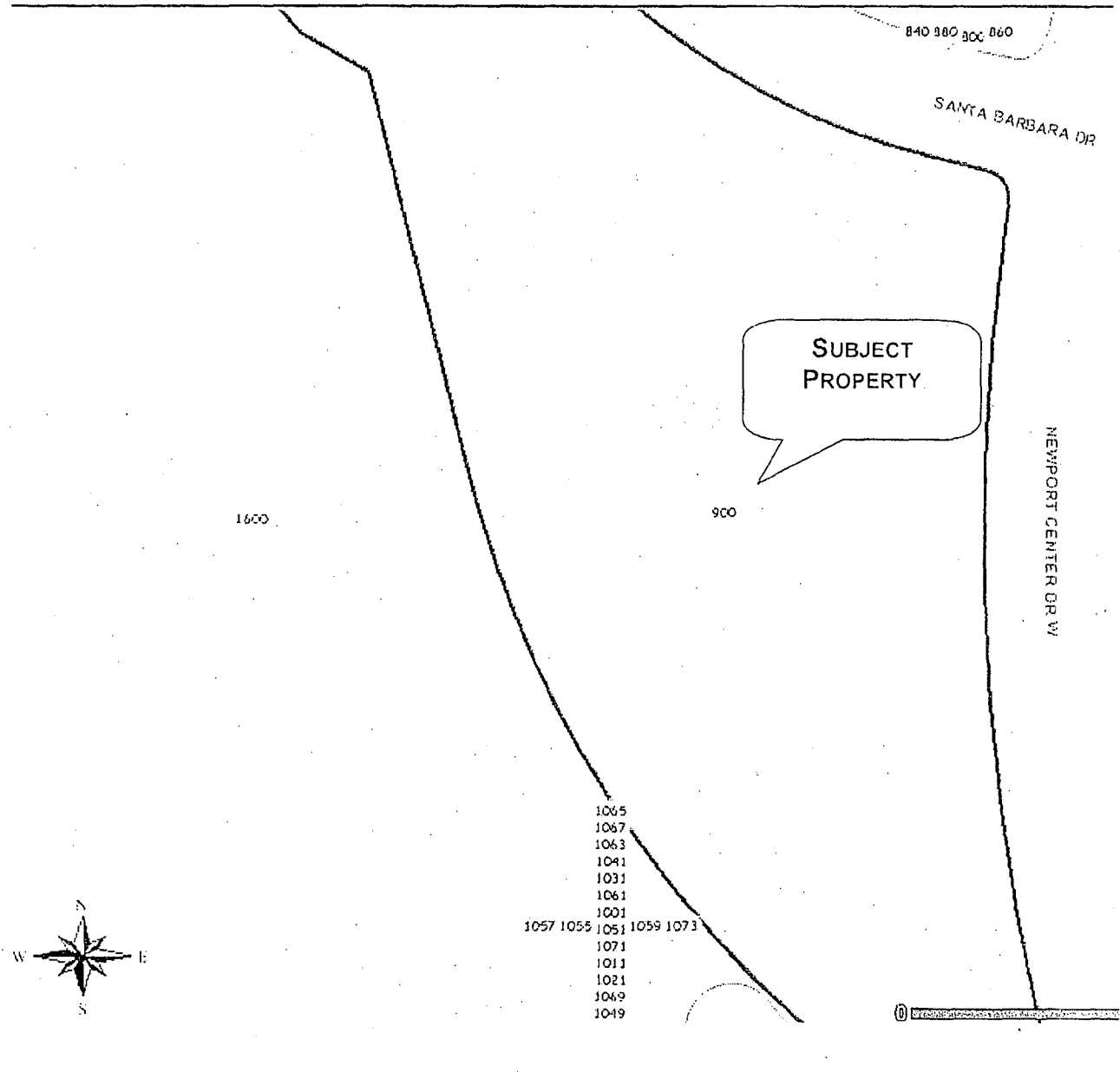
Vehicular Circulation Changes

As stated previously, the meeting rooms will displace the existing drive aisle that provides direct access from the rear parking lot to the front parking lot. The new rear parking lot will also be provided an enhanced access drive that will facilitate access to the service entrance of the hotel facility. Additionally, the enhanced drive entrance will also serve the nearby meeting rooms as a drop off point for valet service personnel. All work proposed within the public right-of-way shall be approved through an encroachment permit issued by the Public Works Department.

Parking Requirement

The Planning Commission approved language in General Plan Amendment No. 81-3 that allowed for a parking requirement based on a demonstrated formula. The parking requirement established by Site Plan Review No. 29 was 1.31 parking spaces for each guest room. The applicant proposes to utilize the same parking requirement and apply it to the reduced number of hotel rooms. This will result in a reduction of the parking requirement from 768 spaces to 697 parking spaces (rooms reduced from 586 to 532). Staff is of the opinion that the reduction in the number of hotel rooms justifies the reduction in the number of required parking spaces. The site plan review also included a modification permit to the Zoning Ordinance to allow the use of compact parking spaces with a total not to exceed 25% of the available parking pool. The proposed parking plan is subject to review and approval by the Public Works Department for the final location of the compact parking spaces on site. Staff is of the opinion that the surplus parking spaces over and above the required number shall be provided as conforming parking spaces and not as additional compact spaces. This will require alterations to the parking plan as presented.

VICINITY MAP



Staff Approval No. SA2004-009
(PA2004-084)

900 NEWPORT CENTER DRIVE

EXHIBIT 10

Land Use Element
of the
City of Newport Beach

*Adopted by the
Newport Beach City Council*

*October 24, 1988
Resolution No. 88-100*

*(Incorporates General Plan Amendments
Approved Through September, 1995)*

Jamboree Road/MacArthur Boulevard Area (Statistical Division L)

This area is comprised of the major commercial and residential planned communities, including Newport Center, Big Canyon, Aeronutronic Ford/Belcourt, North Ford, San Diego Creek North, Jamboree/MacArthur, Koll Center Newport and Newport Place, as well as the Campus Drive Industrial Tract.

Newport Center (Statistical Area L1)

The Newport Center area is bounded by East Coast Highway, Jamboree Road, San Joaquin Hills Road and MacArthur Boulevard. Development is allocated to Newport Center on a block-by-block basis, as set forth in the following discussion. All landscaped entry areas of Newport Center are designated for Recreational and Environmental Open Space. Transfers of development rights in Newport Center are permitted, subject to the approval of the City with the finding that the transfer is consistent with the intent of the General Plan and that the transfer will not result in any adverse traffic impacts. It is proposed that Newport Center be rezoned to the Planned Community District, with a comprehensive Planned Community Text developed and adopted. All development limits are exclusive of parking.

1. *Block O - Corporate Plaza.* This site is bounded by Newport Center Drive, Farallon Drive, Avocado Avenue and Coast Highway. The site is designated for Administrative, Professional and Financial Commercial land use and is allocated 432,320 sq.ft. of office development. 85,000 sq.ft. of this total was transferred from Newport Village as part of the Library Exchange Agreement (Amendment No. 728). Support retail commercial uses are also allowed within this development allocation.
2. *Block 100 - Gateway Plaza.* This area is bounded by Newport Center Drive, Anacapa Drive and Farallon Drive. The site is designated for Administrative, Professional and Financial Commercial land use and is allocated 196,545 sq.ft. of office development. Support retail commercial uses are also allowed within this development allocation.
3. *Block 200 - Design Plaza.* This area is bounded by Newport Center Drive, Block 300, Avocado Avenue, Farallon Drive and Anacapa Drive. The site is designated for Administrative, Professional and Financial Commercial land use and is allocated 178,777 sq.ft. of office development. Support retail commercial uses are also allowed within this development allocation.
4. *Block 300 - Theater Plaza.* This area is bounded by Newport Center Drive, San Miguel Drive, Avocado Avenue and Block 200. The site is designated for Administrative, Professional and Financial Commercial land use and is allocated 104,158 sq.ft. of office development and 2,947 theater seats. [GPA 94-1(B)]. Support retail commercial uses are also allowed within this development allocation.

5. *Block 400 - Medical Plaza.* This area is bounded by Newport Center Drive, San Nicolas Drive, Avocado Avenue and San Miguel Drive. The site is designated for Administrative, Professional and Financial Commercial land use and is allocated 88,173 sq.ft. of office development, and 351,945 sq.ft. of medical office development. Support retail commercial uses are also allowed within this development allocation.
6. *Block 500 - Company Plaza.* This area is bounded Newport Center Drive, Santa Rosa Drive, San Joaquin Hills Road, Avocado Avenue and San Nicolas Drive. The site is designated for Administrative, Professional and Financial Commercial land use and is allocated 377,170 sq.ft. of office development. Support retail commercial uses are also allowed within this development allocation.
7. *Block 600 - Financial Plaza.* This area is bounded by Newport Center Drive, Santa Cruz Drive, San Joaquin Hills Road and Santa Rosa Drive. The site is designated for Administrative, Professional and Financial Commercial land use and is allocated 959,134 sq.ft. of office development and 325 hotel rooms. Support retail commercial uses are also allowed within the office portion of this development allocation. [GPA 93-2(D)]
8. *Block 700 - Insurance Plaza.* This site is bounded by Newport Center Drive, Santa Maria Road, San Clemente Drive and Santa Cruz Drive. The site is designated for Administrative, Professional and Financial Commercial land use and is allocated 327,671 sq.ft. of office development. Support retail commercial uses are also allowed within this development allocation.
9. *Block 800 - Pacific Plaza.* This area is bounded by Newport Center Drive, Santa Barbara Drive, San Clemente Drive and Santa Maria Road. The site is designated for Administrative, Professional and Financial Commercial and Multi-Family Residential land uses. The office portion of the block is allocated 240,888 sq.ft. of office development and 13,096 sq.ft. of restaurant use. Support retail commercial uses are also allowed within this development allocation. The residential portion of this block is allocated 245 dwelling units.
10. *Block 900 - Hotel Plaza.* This area is bounded by Newport Center Drive, the Balboa Bay Tennis Club, the Newport Beach Country Club, Jamboree Road and Santa Barbara Drive. The site is designated for Administrative, Professional and Financial Commercial and Multi-Family Residential land uses. The allowed development is 611 hotel rooms with ancillary hotel support facilities and 16,630 sq.ft. of office development. [GPA 94-1(A)]. The residential site is allocated 67 dwelling units.
11. *Civic Plaza.* This area is bounded by Jamboree Road, San Joaquin Hills Road, Santa Cruz Drive, San Clemente Drive, and Santa Barbara Drive. The site is designated for Administrative, Professional and Financial Commercial; Retail and Service Commercial and Governmental, Educational and Institutional Facilities. Entitlement in this block is as follows:

Office:	337,261 sq.ft.	Police Station:	48,000 sq.ft.
Museum:	31,208 sq.ft.	Auto Dealer:	2.14 acres/25,000 sq.ft.
Fire Station:	13,481 sq.ft.	Retail:	1,760 sq.ft.

The City library site was previously shown for Government, Educational and Institutional Facilities, with an alternate use of Administrative, Professional and Financial Commercial. As part of the Newport Center Library Exchange Agreement between the City and The Irvine Company, GPA 91-1(C) and Amendment No. 729 were approved deleting the library designation from Civic Plaza and increasing the Administrative, Professional and Financial Commercial entitlement by 57,150 sq.ft., 35,000 sq.ft. of which was transferred from Newport Village and 22,150 sq.ft. of which was new entitlement. Subsequently, an additional 30,000 sq.ft. of office entitlement was transferred to Civic Plaza from Corporate Plaza West (Amendment No. 755). The existing 14,000 sq.ft. library will be permitted to remain in Civic Plaza until such time as the new library is completed in Newport Village. The existing art museum occupies 21,208 sq.ft., with an allocation for 10,000 additional sq.ft.

12. *Corporate Plaza West.* This site is bounded by Newport Center Drive, East Coast Highway, the Newport Beach Country Club and the Balboa Bay Tennis Club. The site is designated for Administrative, Professional, and Financial Commercial land use. The site is allocated 115,000 sq.ft.
13. *Balboa Bay Tennis Club.* This site is bounded by Corporate Plaza West, the Newport Beach Tennis Club and the Granville Apartments. The site is designated for Recreational and Environmental Open Space and is allocated 24 tennis courts.
14. *Newport Beach Country Club.* This site is designated for Recreational and Environmental Open Space to allow the continuation of the 131.52 acre facility.
15. *Amling's Nursery.* This site is located on East Coast Highway and is designated for Retail and Service Commercial land use. The maximum allowed development is 5,000 sq.ft. for retail commercial land use only.
16. *Villa Point.* This site is bounded by East Coast Highway, Jamboree Road, Sea Island and the Newport Beach Country Club. The site is designated for Multi-Family Residential land use and is allocated 228 dwelling units. 20% of the units shall be affordable, with the affordability standards and term determined at the time of project approval.
17. *Sea Island.* This area is located on Jamboree Road across from the Newporter Resort. The site is designated for Single Family Attached development and is allocated 132 dwelling units, which reflects the existing land use.
18. *Fashion Island.* This site is located within the circle formed by Newport Center Drive. The site is designated for Retail and Service Commercial land use and is allocated 1,603,850 sq.ft. for regional retail and 1,700 theater seats. An additional 30,000 sq.ft.

of regional retail may be added upon commitment of the Bayview Landing site for senior citizen housing. [GPA 94-2(B)]. No office development is allowed in Fashion Island.

19. *Newport Village*. This area is bounded by San Joaquin Hills Road, MacArthur Boulevard, East Coast Highway and Avocado Avenue.

- A. Ten acres at Coast Highway and MacArthur Boulevard are designated for Governmental, Educational and Institutional Facilities for museum use with a maximum allowed development of 100,000 sq.ft.
- B. Four acres of the Newport Village area are shown for Recreational and Environmental Open Space for neighborhood park use. The precise location of the park site has not been established, but will be determined when plans are submitted for off-site development that was transferred as part of the Library Exchange Agreement.

The property owner shall provide the City with an irrevocable offer of dedication of four acres of the site in consideration for the conversion of previous residential entitlement to office use. The offer to dedicate the four acre parcel may be modified to require dedication of another site within the City subject to the consent of the property owner and the City. The irrevocable offer to dedicate the four acre parcel shall be provided within sixty (60) days after a written request from the City to the property owner. The irrevocable offer shall not obligate the property owner to dedicate the property prior to issuance of permits for the office development that was transferred off-site, or the execution of a development agreement which vests the property owner's rights to construct the allowable development.

- C. Approximately 2.5 acres at the corner of San Joaquin Hills Road and MacArthur Boulevard is also designated for Governmental, Educational and Institutional Facilities, for use as the Orange County Transit District transfer facility. Storage of buses overnight and routine maintenance of vehicles is not allowed on this site.
- D. A four acre portion of the Newport Village site was previously shown for Administrative, Professional and Financial Commercial Uses with an alternate of Government, Educational, Institutional Facilities to allow for the possible relocation of the City library currently located in Civic Plaza. As part of the Library Exchange Agreement, GPA 91-1(C) and Amendment No. 746 were approved designating this four-acre site for a 65,000 sq.ft. library, and deleting all previous entitlements.
- E. The balance of the site, which was previously designated for Administrative, Professional and Financial Commercial land use, was redesignated for Recreational and Environmental Open space as part of the Library Exchange Agreement and Amendment No. 746. All development entitlements for this

property were transferred to other areas of Newport Center as part of that agreement.

ESTIMATED GROWTH FOR STATISTICAL AREA L1						
	Residential (in du's)			Commercial (in sq.ft.)		
	Existing 1/1/87	Gen.Plan Projection	Projected Growth	Existing 1/1/87	Gen.Plan Projection	Projected Growth
1. Block O	-0-	-0-	-0-	246,146	432,320	186,174
2. Block 100	-0-	-0-	-0-	196,545	196,545	-0-
3. Block 200	-0-	-0-	-0-	207,781	207,781	-0-
4. Block 300	-0-	-0-	-0-	130,408	134,908	4,500
5. Block 400	-0-	-0-	-0-	440,118	440,118	-0-
6. Block 500	-0-	-0-	-0-	377,170	377,170	-0-
7. Block 600	-0-	-0-	-0-	1,284,134	1,284,134	-0-
8. Block 700	-0-	-0-	-0-	327,671	327,671	-0-
9. Block 800	-0-	245	245	253,984	253,984	-0-
10. Block 900	67	67	-0-	616,630	622,630	6,000
11. Civic Plaza	-0-	-0-	-0-	365,160	456,710	91,550
12. Corporate Plaza	-0-	-0-	-0-	15,000	115,000	100,000
13. Tennis Club	-0-	-0-	-0-	-0-	-0-	-0-
14. NB Country Club	-0-	-0-	-0-	-0-	-0-	-0-
15. Amling's	-0-	-0-	-0-	3,960	5,000	1,040
16. Villa Point	-0-	228	228	-0-	-0-	-0-
17. Sea Island	132	132	-0-	-0-	-0-	-0-
18. Fashion Island	-0-	-0-	-0-	1,603,850	1,633,850	30,000
19. Newport Village	-0-	-0-	-0-	650	165,000	164,350
TOTAL	199	672	473	6,069,207	6,652,821	583,614
Population	394	1,331	937			

(Revised 12/94)

Big Canyon (Statistical Area L2)

Big Canyon is bounded by San Joaquin Hills Road, Jamboree Road, Ford Road and MacArthur Boulevard. The area is identified as the Big Canyon Planned Community. The areas are numbered as on Planned Community Text map. (see Map 4)

1. *Big Canyon Area 1.* This area is designated for Single Family Attached development and is allocated 83 dwelling units, which reflects the existing land use.
2. *Big Canyon Area 2.* This area is designated for Single Family Attached development and is allocated 17 dwelling units, which reflects the existing land use.
3. *Big Canyon Area 3.* This area is designated for Single Family Attached development and is allocated 12 dwelling units, which reflects the existing land use.

EXHIBIT 11

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

**T 14a**

June 21, 2007

TO: Commissioners and Interested Persons

FROM: Sherilyn Sarb, Deputy Director, South Coast District (Orange County)
Teresa Henry, District Manager, South Coast District
Karl Schwing, Supervisor, Regulation & Planning, Orange County Area
Ryan Todaro, Coastal Program Analyst

SUBJECT: City of Newport Beach Land Use Plan Amendment NPB-MAJ-1-06
Part A (Marriott Hotel VSC to MDR/Santa Barbara Condominiums)

SUMMARY OF STAFF REPORT**DESCRIPTION OF THE SUBMITTAL**

The amendment that is the subject of this report was submitted as part of a package with other Land Use Plan (LUP) amendments. This report deals only with "Part A" of the amendment. Part A of the amendment consists of a request by the City of Newport Beach to change the land use designation of a 4.25 acre area (presently occupied by tennis courts) at the Marriott Hotel from Visitor-Serving Commercial to Medium Density Residential, at 900 Newport Center Drive, Newport Beach, Orange County. (Part B of the amendment was acted on separately at the Commission's July 2006 hearing, and Part C was retracted, in part because the City Council had not authorized its original submittal.) The proposed land use change would allow for the construction of condominiums (or other medium density residential) on the subject property. A corresponding coastal development permit application (5-07-085, Lennar) has been submitted and will be considered at a subsequent hearing.

SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission **DENY** the proposed City of Newport Beach Land Use Plan Amendment NPB MAJ 1-06 Part A as submitted and **APPROVE** the amendment subject to suggested modifications. The motions to accomplish this are found on Page 3.

The major issues raised by this amendment request are adequate provision of visitor-serving commercial development and public access. The proposed land use designation change from Visitor-Serving Commercial to Medium Density Residential would have an adverse affect on priority visitor-serving opportunities in the area. Residential development is a low priority use within the Coastal Zone. However, with the adoption of the suggested modifications, which include a new Land Use Plan policy that requires a payment of a fee to mitigate for the loss of visitor-serving land, the proposed land use designation change would not have an adverse affect on priority

NPB-MAJ-1-06 (Part A)

visitor-serving opportunities in the area. The mitigation fee shall be for the protection, enhancement and provision of lower-cost visitor-serving uses at Crystal Cove State Park in the amount of \$5,000,000.00 (five million dollars) to off-set the loss of the priority land use in Newport Center. This mitigation fee would fund Phase 2 of the ongoing Crystal Cove Alliance restoration effort of the Historic District at Crystal Cove State Park and which is presently contemplated to provide for the completion of the Outdoor Educational Commons (Cottages 40, 42, 43 and 44), the Beach Museum (Cottage 13), Cottage 5, Cottage 45, the garages and creek restoration.

ADDITIONAL INFORMATION

For further information, please contact Ryan Todaro at the South Coast District Office of the Coastal Commission at (562) 590-5071. The proposed amendment to the Land Use Plan (LUP) of the City of Newport Beach Local Coastal Program (LCP) is available for review at the Long Beach Office of the Coastal Commission or at the City of Newport Beach Planning Department. The City of Newport Beach Planning Department is located at 3300 Newport Boulevard in Newport Beach. Homer Bludau is the contact person for the City of Newport Beach, and he may be reached by calling (949) 644-3000.

EXHIBITS

1. City Council Resolution No. 2006-02 approved January 10, 2006
2. City Council Resolution No. 2006-26 approved March 28, 2006
3. Vicinity Map (Newport Center)
4. Land Use Map
5. Vicinity Map (Crystal Cove State Park)
6. Site Map (Crystal Cove State Park)
7. City of Newport Beach letter

**I. COMMISSION RESOLUTION ON CITY OF NEWPORT BEACH
LOCAL COASTAL PROGRAM AMENDMENT 1-06 (PART A)**

Motion #1

*"I move that the Commission **CERTIFY** the City of Newport Beach Land Use Plan Amendment NPB MAJ 1-06 Part A as submitted."*

Staff Recommendation for Denial

Staff recommends a **NO** vote. Failure of this motion will result in denial of the land use plan amendment as submitted and adoption of the following resolutions and findings. The motion to certify as submitted passes only upon affirmative vote of a majority of the appointed Commissioners.

Resolution for Denial

The Commission hereby **DENIES** the City of Newport Beach Land Use Plan Amendment NPB MAJ 1-06 Part A as submitted and adopts the findings stated below on the grounds that the amendment will not meet the requirements of and is not in conformity with the policies of Chapter 3 of the California Coastal Act. Certification of the Land Use Plan amendment would not comply with the California Environmental Quality Act as there are feasible mitigation measures and alternatives that would substantially lessen the significant adverse impacts on the environment that will result from certification of the land use plan amendment as submitted.

Motion #2

*"I move that the Commission **CERTIFY** the City of Newport Beach Land Use Plan Amendment NPB MAJ 1-06 Part A if modified as suggested in this staff report."*

Staff Recommendation for Certification

Staff recommends a **YES** vote. Passage of this motion will result in the certification of the land use plan with suggested modification and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of a majority of the appointed Commissioners.

Resolution for Certification with Suggested Modifications

The Commission hereby certifies the Land Use Plan Amendment NPB MAJ 1-06 Part A for the City of Newport Beach if modified as suggested and adopts the findings set forth below on the grounds that the Land Use Plan amendment with suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment if modified as suggested

complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the Land Use Plan Amendment may have on the environment.

II. PROCEDURAL PROCESS (LEGAL STANDARD FOR REVIEW)

A. Standard of Review

The standard of review for land use plan amendments is found in Section 30512 of the Coastal Act. This section requires the Commission to certify an LUP amendment if it finds that it meets the requirements of, and is in conformity with, the policies of Chapter 3 of the Coastal Act. Specifically, Section 30512(c) states: *"The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the Commission."*

B. Procedural Requirements

Pursuant to Section 13551(b) of Title 14 of the California Code of Regulations, a local government's resolution for submittal of a proposed LUP amendment must indicate whether the local coastal program amendment will require formal local government adoption after Commission approval, or is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513 and 30519. The City of Newport Beach's submittal indicates that this LCP amendment, if approved as submitted, will take effect upon Commission certification. Approval of the amendment with modifications will require subsequent action by the City.

III. BACKGROUND

The Land Use Plan (LUP) for the City of Newport Beach was effectively certified on May 19, 1982 and comprehensively updated October 13, 2005. The subject amendment was initially submitted by the City of Newport Beach on March 6, 2006. On March 15, 2006, Coastal Commission staff notified the City of Newport Beach that the submittal was incomplete and that additional information would be required to complete the submittal. City staff submitted the information on April 14, 2006. On May 18, 2006, Coastal Commission staff notified the City that the amendment request was complete. The Commission approved a request for a one-year (1) time extension of the amendment on June 13, 2006, which gives the Commission until July 13, 2007 to act on this submission. Part B of the amendment request, which involved a change in the

land use designation of another parcel from Medium Density Residential to Open Space, was approved by the Commission on July 12, 2006. Part A of the amendment request is now being submitted for Commission action. Part A involves a change in land use designation at 900 Newport Center Drive from Visitor-Serving Commercial to Medium Density Residential.

IV. SUMMARY OF PUBLIC PARTICIPATION

The City of Newport Beach approved this segment of the Land Use Plan amendment request (Part A) through a City Council public hearing on January 10, 2006. The item was originally scheduled for the Council hearing of November 22, 2005, but the item was continued to the December 13, 2005 hearing and finally approved on January 10, 2006. It was approved through City Council Resolution No. 2006-02, which approved General Plan Amendment No. 2004-005 and Local Coastal Plan Amendment 2005-001 (Exhibit 1). Prior to either the City Council approving the LUP amendment request, or the Planning Commission voting to recommend that the City Council do so, the Planning Commission held a public hearing on November 3, 2005. Notice was provided for both entities' hearings. Notice of the City Council's public hearing was mailed and posted on November 14, 2005 and published in the local newspaper on November 12, 2005. The City Council approved a subsequent resolution (Resolution No. 2006-26) on March 28, 2006 to correct procedural deficiencies in the original resolution related to the Coastal Act requirements (Exhibit 2).

One letter of opposition was received at the local level. The letter expresses concerns about increased density at the subject site. No oral comments were received during the public hearings held at the local level.

V. SUGGESTED MODIFICATIONS

Staff recommends the following suggested modifications to the proposed LUP amendment be adopted.

Suggested Modification #1

Add the following new Land Use Plan policy to Chapter 2, Section 2.3 (Visitor-Serving and Recreational Development), Sub-section 2.3.1 (Commercial) of the Coastal Land Use Plan after existing policy number 2.3.1-7:

- 2.3.1-8 LCP Amendment No. 2005-001 (NPB-MAJ-1-06 part A) to the Coastal Land Use Plan changing a portion of land, not to exceed 4.25 acres in size, designated Visitor-Serving Commercial (CV) in Newport Center to a residential designation shall require a payment of a fee to mitigate for the loss of visitor-serving land. The mitigation fee shall be used for the protection, enhancement and provision of lower-cost visitor-serving uses

at Crystal Cove State Park. The mitigation fee shall be in the amount of \$5,000,000.00 (five million dollars) to off-set the loss of the priority land use in Newport Center. The mitigation fee shall be paid prior to issuance of any coastal development permit granted for any residential project within the newly designated area and to an entity, identified by the permitting agency, capable of implementing the mitigation at Crystal Cove State Park. Until paid in accordance with the terms and conditions of the coastal development permit, the amount shall be increased every July 1st by an amount calculated on the basis of the percentage change from the year 2007 in the California Consumer Price Index for Urban Consumers as determined by the entity that grants the coastal development permit.

The addition of this new policy may affect the numbering of subsequent LUP policies when the City of Newport Beach publishes the final LUP incorporating the Commission's suggested modifications. This staff report will **not** make revisions to the policy numbers. The City will make modifications to the numbering system when it prepares the final LUP for submission to the Commission for certification pursuant to Sections 13544 and 13544.5 of the California Code of Regulations.

Suggested Modification #2

The City shall submit a revised Coastal Land Use Plan Map (i.e. that map referenced in Chapter 2, subsection 2.1.2 of the Coastal Land Use Plan), which reflects the land use change approved by the Commission through this amendment.

VI. FINDINGS FOR DENIAL OF CERTIFICATION OF THE CITY OF NEWPORT BEACH LAND USE PLAN AMENDMENT, AS SUBMITTED, AND FINDINGS FOR APPROVAL OF THE CITY OF NEWPORT BEACH LAND USE PLAN AMENDMENT, IF MODIFIED AS SUGGESTED

A. Amendment Description

The proposed submittal consists of a request by the City of Newport Beach to change the land use designation of a 4.25 acre area (presently occupied by tennis courts) at the Marriott Hotel from Visitor-Serving Commercial to Medium Density Residential, at 900 Newport Center Drive, Newport Beach, Orange County. Approximately 9.54 acres of Visitor-Serving Commercial (VC) would remain on site in Newport Center after the land use designation change. The proposed land use change would allow for the construction of condominiums (or other medium density residential) on the subject property.

B. Findings For Denial

The Commission hereby finds and declares as follows:

Site Description and Land Use Designation

The proposed land use redesignation will affect only one site—900 Newport Center Drive in the City of Newport Beach, Orange County. The 4.25-acre site is located in the Newport Center/Fashion Island area of the City, inland of Pacific Coast Highway (Exhibit 3). The site is currently operated as a private tennis club used by members and guests of the Newport Beach Marriott Hotel. There are eight outdoor tennis courts, a clubhouse and ancillary uses on the property. The property owner proposes to subdivide the subject site from the larger hotel parcel and develop a 79-unit condominium project.¹

The site is currently designated Visitor-Serving Commercial (CV-B) in the City's Certified Land Use Plan, as depicted in Exhibit 4. The site is surrounded by a golf course to the west and north, hotel development to the south, and commercial offices to the east.

Coastal Act Policies

As stated previously, the Coastal Act is the standard of review in the current analysis. The Coastal Act encourages the provision of lower cost visitor and recreational facilities and prioritizes visitor-serving commercial development over residential development. The proposed LUP amendment is not in conformity with the public access and recreation policies of the Coastal Act relating to the provision of visitor serving development. Applicable provisions of the Coastal Act include the following:

Section 30213 states, in pertinent part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30222 states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

¹ Coastal Development Permit Application 5-07-085 (Lennar), which seeks authorization to develop the condominium project, will be considered by the Commission at a subsequent hearing.

Applicable Land Use Plan Policies from the certified Coastal Land Use Plan

- 2.3.1-3 *On land designated for visitor-serving and/or recreational uses, give priority to visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation over other commercial uses, except for agriculture and coastal-dependant industry.*
- 2.3.3-3 *Encourage visitor-serving and recreational developments that provide public recreational opportunities.*

Proposed Change in Land Use Designation

The proposed amendment (NPB MAJ 1-06, Part A) involves a request to change the land use designation of a 4.25-acre area of the Newport Beach Marriott Hotel from Visitor Serving Commercial to Medium Density Residential at 900 Newport Center Drive. No other properties are subject to the proposed land use change.

The proposed change will have an adverse affect on priority visitor-serving opportunities in the area. Residential development is a low priority use within the Coastal Zone. The City indicates, however, that the loss of CV-B designated land at this location will not have an adverse affect on visitor-serving commercial or recreational activities.

According to the amendment request, "[t]he property is not located in close proximity to coastal resources, coastal recreational use or the water and the change in land use does not impact the adjacent visitor serving uses other than to eliminate the accessory tennis courts, which is not a coastal dependent recreational activity." Although the tennis courts are not typically considered a "coastal dependent" activity, tennis is a recreational activity, and the site is part of a larger commercial facility (Marriott Hotel) that serves visitors to the coast. Thus, although currently operated as a private tennis club serving only members and guests of the Newport Beach Marriott Hotel, the club is nevertheless a visitor-serving recreational offering. In addition, the hotel is located in close proximity to popular visitor destinations, such as the Newport Dunes, Balboa Island and the beach. The site is located in a highly visible, well-traveled location and could potentially support some form of commercial and/or recreational development in the future. Re-designation of the site for residential development now results in lost future opportunity for expanded, enhanced or even lower cost visitor-serving uses at the site.

The City states that the loss of this visitor-serving commercial site as a result of the requested amendment would not significantly reduce the amount of visitor-serving land in the City. The City concludes that the project represents a 2% reduction in visitor serving uses based on a table showing the portion of land currently designated as visitor serving commercial and what will remain after the 4.25-acre site is re-designated. The table is replicated below.

Visitor Serving Commercial Designation	Amount of Land
CV-A (0.5—0.75)	7.65 acres
CV-B (0.5—1.25)	42.90 acres
Newport Coast Planned Community	153.00 acres
CITYWIDE TOTAL:	203.55 acres
Less project	-4.25 acres
REMAINING CITYWIDE TOTAL:	199.30 acres
	(2% loss of CV-B)

The City included the Newport Coast Planned Community in the above-referenced tabulation. However, Newport Coast is covered by a segment of the County of Orange certified LUP and is not within the boundary of the City of Newport Beach certified LUP. As such, the 153.00 acres of visitor serving commercially designated area referred to in the table is not covered by the LUP that is the subject of the current amendment request. In actuality, the 4.25-acre loss represents an 8.4% $[4.25/(7.65+42.90)]$ --not 2%-- reduction in visitor-serving land in the portion of the City covered by this LUP.

In addition, the subject site is one of only five sites designated Visitor-Serving Commercial (CV) in the City's certified LUP. Many land uses that are in fact visitor-serving are located within the General Commercial (CG) or Neighborhood Commercial (CN) designation and could thus cease to provide a visitor-serving function. According to the LUP, *[t]he CV designation is intended to provide for accommodations, goods, and services intended to primarily serve the needs of visitors of Newport Beach.* Hotels, and their ancillary development, clearly fit this designation and should be protected consistent with Section 30222 of the Coastal Act. The LUP includes policies that encourage visitor-serving and recreational developments that provide public recreational opportunities. Although the tennis courts are part of a private club, they are available for use by hotel guests. Hotel guests are typically members of the public that are visitors to the area.

The agent for the corresponding CDP application states that the tennis courts are underutilized and replacing the courts *"does not remove a publicly accessible, widely-used recreation facility from the coastal zone."* The Commission acknowledges that the property owner is in no way obligated to retain the tennis court use of the site. However, under the current land use designation, the site can only be developed with uses allowed under the CV designation. Commercial development of the site could serve potential visitors to the coast. The location is conducive to commercial recreational development and consistent with the adjacent hotel use and the nearby commercial development. Residential development at the subject site would serve no purpose to members of the visiting public and could potentially establish a precedent for residential conversions in the other CV designated areas.

As submitted, the proposed land use conversion proposed as Part A of the City's amendment request is inconsistent with Section 30213 of the Coastal Act, which requires lower cost visitor and recreational facilities be *"protected, encouraged, and, where feasible, provided."* The proposed amendment will also have an adverse affect on the priority *"visitor-serving commercial recreational facilities"* to be provided under

Section 30222 of the Coastal Act. Therefore, Part A of the amendment must be denied, as submitted.

C. Findings for Approval with Suggested Modifications

The Commission hereby finds and declares as follows:

Coastal Act Policies

As stated previously, the Coastal Act is the standard of review in the current analysis. The Coastal Act encourages the provision of lower cost visitor and recreational facilities and prioritizes visitor-serving commercial development over residential development. The proposed LUP amendment is not in conformity with the public access and recreation policies of the Coastal Act relating to the provision of visitor serving development. Applicable provisions of the Coastal Act include the following:

Section 30213 states, in pertinent part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30222 states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Applicable Land Use Plan Policies from the certified Coastal Land Use Plan

2.3.1-3 *On land designated for visitor-serving and/or recreational uses, give priority to visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation over other commercial uses, except for agriculture and coastal-dependant industry.*

2.3.3-3 *Encourage visitor-serving and recreational developments that provide public recreational opportunities.*

Mitigation to Replace the Loss of Visitor-Serving Recreation

In order for the proposed land use conversion from Visitor-Serving Commercial to Medium Density Residential to be found consistent with the Coastal Act, it must be appropriately mitigated since the proposed land use change would allow for residential development on the subject property, which is not a priority use within the Coastal Zone. The proposed amendment is a project specific request. A corresponding coastal

development permit application (5-07-085) for the construction of condominiums at this location has been submitted and will be considered at a subsequent hearing. It should be noted that with this corresponding project, Marriott's property would not lose any entitlement to the 611 rooms allowed on the site (currently, according to the applicant, there are 532 rooms with a 75% occupancy).

Ideally, the loss of area designated for visitor serving uses should be offset by re-designating some other equivalent or superior area within the City that is designated with a low priority land use, to a visitor serving use. The applicant (Lennar) for the corresponding coastal development permit application undertook an extensive search for potential visitor-serving properties within the coastal zone in Newport Beach to mitigate for the change in land use. In reviewing sites of similar size, the applicant determined that no properties were suitable, the result of Newport Beach being nearly built-out. In addition, the applicant determined that the acquisition of individual parcels totaling 4.25 acres was not an attractive prospect; while residential property could be acquired, this would result in sporadic rezoning, incompatible uses adjacent to existing uses and proved economically unfeasible given the property values in Newport Beach.

As a result, Lennar, in consultation with the City, proposed an alternative; to pay a fee to mitigate for the loss of visitor-serving land. The proposal is to provide funding for the protection, enhancement and provision of lower-cost visitor-serving uses at Crystal Cove State Park in the amount of \$5,000,000.00 (five million dollars). This mitigation fee would off-set the loss of the priority land use in Newport Center and provide funding for Phase 2 of the ongoing effort by State Parks and their concessionaire, Crystal Cove Alliance, to restore the Historic District within Crystal Cove State Park. Phase 2 is presently contemplated to include the completion of the Outdoor Educational Commons (Cottages 40, 42, 43 and 44), the Beach Museum (Cottage 13), overnight accommodations in Cottage 5, Cottage 45, and the garages and creek restoration (Exhibit 6). Therefore, the Commission is requiring a suggested modification that would implement this alternative. Suggested Modification #1 would require the City to add a new Land Use Plan policy that requires a payment of a fee to mitigate for the loss of visitor-serving land. The policy includes provisions to adjust the mitigation fee to account for inflation. Implementation of the mitigation requirement would be carried out through the coastal development permit process.

The Crystal Cove Historic District is a 12.3-acre coastal portion of the 2,791-acre Crystal Cove State Park, which is located along the southeast coast of the City of Newport Beach. The federally listed Historic District is an enclave of 46 vintage rustic coastal cottages originally built in the 1920's and 1930's nestled around the mouth of Los Trancos Creek. It is one of the last remaining examples of early 20th century Southern California coastal development.

California State Parks has completed Phase I of the restoration of the Historic District, which provides cottages for visitor services, educational and community programs, a restaurant, and 13 cottages for overnight use by the public. Cottages available for

overnight rental include studios, one- and two-bedroom houses, and hostel-style dormitories.

Restoration of these historic cottages represents a significant opportunity for lower cost visitor-serving accommodations and associated educational and visitor uses at Crystal Cove State Park, which has become a popular destination of statewide significance for the public, especially since some of the cottages became available for overnight use. Only 22 of the 46 historic cottages have been restored to date. Crystal Cove Alliance, the non-profit cooperating association and concessionaire benefiting Crystal Cove State Park, is currently raising funds to restore the remaining 24 cottages for visitor-serving and overnight accommodation uses. With funding, restoration can begin immediately.

Revised Coastal Land Use Plan Map

Since the proposed amendment would change the land use designation of the 4.25 acre site, the Coastal Land Use Plan Map would need to be updated. Therefore, the Commission is requiring suggested modification #2, which would require the City to submit a revised Coastal Land Use Plan Map (i.e. that map referenced in Chapter 2, subsection 2.1.2 of the Coastal Land Use Plan), which reflects the land use change approved by the Commission through this amendment.

Conclusion

The proposed amendment, as modified through the suggested modifications, is consistent with Section 30213 of the Coastal Act, which requires lower cost visitor and recreational facilities be "*protected, encouraged, and, where feasible, provided.*" In addition, the proposed amendment, as modified through the suggested modifications, would not have an adverse effect on the priority "*visitor-serving commercial recreational facilities*" to be provided under Section 30222 of the Coastal Act.

VII. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with a local coastal program (LCP). The Commission's Local Coastal Program review and approval procedures have been found by the Resources Agency to be functionally equivalent to the environmental review process. Thus, under Section 21080.5 of CEQA, the Commission is relieved of the responsibility to prepare an environmental impact report for each local coastal program submitted for Commission review and approval. Nevertheless, the Commission is required when approving a local coastal program to find that the local coastal program does conform with the provisions of CEQA. As part of the City's review of this project, a Mitigated Negative Declaration (MND) was prepared for the proposed project and found that with mitigation, the project's environmental impacts would be reduced to less than significant levels.

EXHIBIT 12

CITY OF NEWPORT BEACH

TO: City Council

FROM: Planning Department

SUBJECT: Financial obligations of the Marriott Hotel to the improvement of the City's Traffic and Circulation System required as a result of the proposed hotel expansion.

In our initial staff report of February 14, 1983, it was indicated that the Marriott Hotel, as a result of the approval of the Traffic Study and Site Plan Review No. 29, would be required to pay to the City certain sums of money for the purpose of constructing sound-attenuation barriers, traffic signals and traffic circulation improvements. In addition the Marriott Corporation was also required, as a result of the approval of the General Plan Amendment, to pay to the City a negotiated sum of money towards the construction of additional circulation system improvements. The purpose of this supplemental report is to summarize for the City Council what the actual contribution amounts to.

Noise walls adjacent to Eastbluff, Irvine Terrace and West Newport	\$130,200.00
--	--------------

Traffic signal at the intersection of Santa Barbara Drive and Newport Center Drive (50%)	40,000.00
--	-----------

Traffic circulation system improvements PCH/Orange Street, PCH/Prospect Street, PCH/Bayside Drive and Jamboree Road/Ford Road	242,000.00
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SUB TOTAL	\$412,000.00
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Additional circulation system improvements calculated as representing the project's percentage of total traffic added to the circulation system at General Plan buildout and applied toward the City's share of the Coast Highway widening project between Mac Arthur Boulevard and Bayside Drive (13.7% of \$1,400,000.00)	\$191,800.00
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GRAND TOTAL	\$603,800.00
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TO:

City Council - 2.

It is recommended that the City Council's approval of this project require the deposit of \$361,800.00, noise wall, traffic signal and the additional circulation system improvement funds, prior to the issuance of any grading or building permits, and the remaining \$242,000.00, TPO circulation system improvements, be deposited prior to occupancy of any portion of the project's facilities, other than those designed for parking.

Respectfully submitted,


JAMES D. HEWICKER
Planning Director

JDH/kk



CITY OF NEWPORT BEACH

CITY ATTORNEY'S OFFICE

Correspondence

Item No. 2b

Newport Beach Country Club

PA2005-140

DATE: November 14, 2011

TO: Kimberly Brandt, Community Development Director
Rosalinh Ung, Associate Planner

FROM: Leonie Mulvihill, Assistant City Attorney

A handwritten signature in black ink, appearing to be "LM", is written over the name Leonie Mulvihill.

MATTER: Golf Realty Fund: Development Agreement
No.: A10-00773

SUBJECT: Transmittal of Development Agreement

Attached please find a copy of the proposed Development Agreement between the City of Newport Beach and Golf Realty Fund.

LM

[A10-00773] BrandtK-UngR from LM 11.14.11 re Transmittal of DA

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92663-3884
Attn: City Clerk

(Space Above This Line Is for Recorder's Use Only)

This Agreement is recorded at the request and for the benefit of the City of Newport Beach and is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

DEVELOPMENT AGREEMENT

between

CITY OF NEWPORT BEACH

and

GOLF REALTY FUND

**CONCERNING PROPERTIES LOCATED IN NEWPORT CENTER
WITHIN THE
NEWPORT BEACH COUNTRY CLUB PLANNED COMMUNITY DISTRICT**

DEVELOPMENT AGREEMENT

(Pursuant to California Government Code sections 65864-65869.5)

This DEVELOPMENT AGREEMENT (the "Agreement") is dated for reference purposes as of the __ day of _____, 2011 (the "Agreement Date"), and is being entered into by and between the City of Newport Beach ("City"), and Golf Realty Fund, a California limited partnership "Owner"). City and Owner are sometimes collectively referred to in this Agreement as the "Parties" and individually as a "Party."

RECITALS

A. Owner owns a fee interest in title to that certain real property located in the City of Newport Beach, County of Orange, State of California which is more particularly described in the legal description attached as Exhibit "A" and depicted on the site map attached hereto as Exhibit B (the, "Property"). The Property is located within and consists of approximately 145 acres of the area shown on the City's Zoning Map as the Newport Beach Country Club Planned Community District.

B. In order to encourage investment in, and commitment to, comprehensive planning and public facilities financing, strengthen the public planning process and encourage private implementation of the local general plan, provide certainty in the approval of projects in order to avoid waste of time and resources, and reduce the economic costs of development by providing assurance to property owners that they may proceed with projects consistent with existing land use policies, rules, and regulations, the California Legislature adopted California Government Code sections 65864-65869.5 (the "Development Agreement Statute") authorizing cities and counties to enter into development agreements with persons or entities having a legal or equitable interest in real property located within their jurisdiction.

C. On March 13, 2007, the City Council adopted Ordinance No. 2007-6, entitled "Ordinance Amending Chapter 15.45 of City of Newport Beach Municipal Code Regarding Development Agreements" (the "Development Agreement Ordinance"). This Agreement is consistent with the Development Agreement Ordinance.

D. As detailed in Section 3 of this Agreement, Owner has agreed to provide the following significant public benefits as consideration for this Agreement: Development of Visitor-Serving Uses within the Coastal Zone, and other economic contributions including the payment of a Public Benefit Fee. _____.

E. This Agreement is consistent with the City of Newport Beach General Plan ("General Plan"), including without limitation the General Plan's designation of the Property as "PR (Parks and Recreation)" the Coastal Land Use Plan's designation as "OS (Open Space)" and the Newport Beach Country Club Planned Community District (PA 2008-152) that was adopted in 1997 by Ordinance No. 97-10 in order to establish appropriate zoning to regulate land use and development of the Property consistent with the General Plan.

F. In recognition of the significant public benefits that this Agreement provides, the City Council has found that this Agreement: (i) is consistent with the City of Newport Beach General Plan as of the date of this Agreement; (ii) is in the best interests of the health, safety, and

general welfare of City, its residents, and the public; (iii) is entered into pursuant to, and constitutes a present exercise of, City's police power; (iv) is consistent and has been approved consistent with the Final Environmental Impact Report for the City of Newport Beach General Plan 2006 Update (State Clearinghouse No. 2006011119) and the Mitigated Negative Declaration for the Newport Beach Country Club Planned Community District (PA 2008-152) approved by the City Council on or before the Agreement Date, both of which analyze the environmental effects of the proposed development of the Project on the Property; and (v) is consistent and has been approved consistent with provisions of California Government Code section 65867 and City of Newport Beach Municipal Code chapter 15.45.

G. On _____, 201_, City's Planning Commission held a public hearing on this Agreement, made findings and determinations with respect to this Agreement, and recommended to the City Council that the City Council approve this Agreement.

H. On _____, 201_, the City Council also held a public hearing on this Agreement and considered the Planning Commission's recommendations and the testimony and information submitted by City staff, Owner, and members of the public. On _____, 201_, consistent with applicable provisions of the Development Agreement Statute and Development Agreement Ordinance, the City Council adopted its Ordinance No. ____ (the "Adopting Ordinance"), finding this Agreement to be consistent with the City of Newport Beach General Plan and approving this Agreement.

AGREEMENT

NOW, THEREFORE, City and Owner agree as follows:

1. Definitions.

In addition to any terms defined elsewhere in this Agreement, the following terms when used in this Agreement shall have the meanings set forth below:

"Action" shall have the meaning ascribed in Section 8.10 of this Agreement.

"Adopting Ordinance" shall mean City Council Ordinance No. ____ approving and adopting this Agreement.

"Agreement" shall mean this Development Agreement, as the same may be amended from time to time.

"Agreement Date" shall mean the date first written above, which date is the date the City Council adopted the Adopting Ordinance.

"CEQA" shall mean the California Environmental Quality Act (California Public Resources Code Sections 21000-21177) and the implementing regulations promulgated thereunder by the Secretary for Resources (California Code of Regulations, Title 14, section 15000 *et seq.*) ("CEQA Guidelines"), as the same may be amended from time to time.

"City" shall mean the City of Newport Beach, a California charter city.

"City Council" shall mean the governing body of City.

"City's Affiliated Parties" shall have the meaning ascribed in Section 9.1 of this Agreement.

"Claim" shall have the meaning ascribed in Section 9.1 of this Agreement.

"CPI Index" shall mean the Consumer Price Index published from time to time by the United States Department of Labor for all urban consumers (all items) for the smallest geographic area that includes the City or, if such index is discontinued, such other similar index as may be publicly available that is selected by City in its reasonable discretion.

"Cure Period" shall have the meaning ascribed in Section 7.1 of this Agreement.

"Default" shall have the meaning ascribed to that term in Section 7.1 of this Agreement.

"Develop" or "Development" shall mean to improve or the improvement of the Property for the purpose of completing the structures, improvements, and facilities comprising the Project, including but not limited to: grading; the construction of infrastructure and public facilities related to the Project, whether located within or outside the Property; the construction of all of the private improvements and facilities comprising the Project; the preservation or restoration, as required of natural and man-made or altered open space areas; and the installation of landscaping. The terms "Develop" and "Development," as used herein, do not include the maintenance, repair, reconstruction, replacement, or redevelopment of any structure, improvement, or facility after the initial construction and completion thereof.

"Development Agreement Ordinance" shall mean Chapter 15.45 of the City of Newport Beach Municipal Code.

"Development Agreement Statute" shall mean California Government Code Sections 65864-65869.5, inclusive.

"Development Exactions" shall mean any requirement of City in connection with or pursuant to any ordinance, resolution, rule, or official policy for the dedication of land, the construction or installation of any public improvement or facility, or the payment of any fee or charge in order to lessen, offset, mitigate, or compensate for the impacts of Development of the Project on the environment or other public interests.

"Development Plan" shall mean the Newport Beach Planned Community District, Vesting Tentative Tract Map, and _____ Development Plan approved by the City Council on or before the Agreement Date, as the same may be amended from time to time consistent with this Agreement.

"Development Regulations" shall mean the following regulations as they are in effect as of the Effective Date and to the extent they govern or regulate the development of the Property, but excluding any amendment or modification to the Development Regulations adopted, approved, or imposed after the Effective Date that impairs or restricts Owner's rights set forth in this Agreement, unless such amendment or modification is expressly authorized by this Agreement or is agreed to by Owner in writing: the General Plan; the Development Plan; and, to

the extent not expressly superseded by the Development Plan or this Agreement, all other land use and subdivision regulations governing the permitted uses, density and intensity of use, design, improvement, and construction standards and specifications, procedures for obtaining required City permits and approvals for development, and similar matters that may apply to development of the Project on the Property during the Term of this Agreement that are set forth in Title 15 of the Municipal Code (buildings and construction), Title 19 of the Municipal Code (subdivisions), and Title 20 of the Municipal Code (planning and zoning), but specifically excluding all other sections of the Municipal Code, including without limitation Title 5 of the Municipal Code (business licenses and regulations). Notwithstanding the foregoing, the term "Development Regulations," as used herein, does not include any City ordinance, resolution, code, rule, regulation or official policy governing any of the following: (i) the conduct of businesses, professions, and occupations; (ii) taxes and assessments; (iii) the control and abatement of nuisances; (iv) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property; or (v) the exercise of the power of eminent domain.

"Effective Date" shall mean the latest of the following dates, as applicable: (i) the date that is thirty (30) days after the Agreement Date; (ii) if a referendum concerning the Adopting Ordinance or any of the Development Regulations approved on or before the Agreement Date is timely qualified for the ballot and a referendum election is held concerning the Adopting Ordinance or any of such Development Regulations, the date on which the referendum is certified resulting in upholding and approving the Adopting Ordinance and such Development Regulations and becomes effective, if applicable; (iii) if a lawsuit is timely filed challenging the validity or legality of the Adopting Ordinance, this Agreement, and/or any of the Development Regulations approved on or before the Agreement Date, the date on which said challenge is finally resolved in favor of the validity or legality of the Adopting Ordinance, this Agreement, and/or the applicable Development Regulations, whether such finality is achieved by a final non-appealable judgment, voluntary or involuntary dismissal (and the passage of any time required to appeal an involuntary dismissal), or binding written settlement agreement; or (iv) the date of approval of a coastal development permit for the Project. Promptly after the Effective Date occurs, the Parties agree to cooperate in causing an appropriate instrument to be executed and recorded against the Property memorializing the Effective Date.

"Environmental Laws" means all federal, state, regional, county, municipal, and local laws, statutes, ordinances, rules, and regulations which are in effect as of the Agreement Date, and all federal, state, regional, county, municipal, and local laws, statutes, rules, ordinances, rules, and regulations which may hereafter be enacted and which apply to the Property or any part thereof, pertaining to the use, generation, storage, disposal, release, treatment, or removal of any Hazardous Substances, including without limitation the following: the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., as amended ("CERCLA"); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, et seq., as amended ("RCRA"); the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. Sections 11001 et seq., as amended; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., as amended; the Clean Air Act, 42 U.S.C. Sections 7401 et seq., as amended; the Clean Water Act, 33 U.S.C. Section 1251, et seq., as amended; the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq., as amended; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Sections 136 et seq., as amended; the Federal Safe

Drinking Water Act, 42 U.S.C. Sections 300f et seq., as amended; the Federal Radon and Indoor Air Quality Research Act, 42 U.S.C. Sections 7401 et seq., as amended; the Occupational Safety and Health Act, 29 U.S.C. Sections 651 et seq., as amended; and California Health and Safety Code Section 25100, et seq.

“General Plan” shall mean City’s 2006 General Plan adopted by the City Council on July 25, 2006, by Resolution No. 2006-76, as amended through the Agreement Date but excluding any amendment after the Agreement Date that impairs or restricts Owner’s rights set forth in this Agreement, unless such amendment is expressly authorized by this Agreement, is authorized by Sections 8 or 9, or is specifically agreed to by Owner. The Land Use Plan of the Land Use Element of the General Plan was approved by City voters in a general election on November 7, 2006.

“Hazardous Substances” means any toxic substance or waste, pollutant, hazardous substance or waste, contaminant, special waste, industrial substance or waste, petroleum or petroleum-derived substance or waste, or any toxic or hazardous constituent or additive to or breakdown component from any such substance or waste, including without limitation any substance, waste, or material regulated under or defined as “hazardous” or “toxic” under any Environmental Law.

“Mortgage” shall mean a mortgage, deed of trust, sale and leaseback arrangement, or any other form of conveyance in which the Property, or a part or interest in the Property, is pledged as security and contracted for in good faith and for fair value.

“Mortgagee” shall mean the holder of a beneficial interest under a Mortgage or any successor or assignee of the Mortgagee.

“Notice of Default” shall have the meaning ascribed in Section 8.1 of this Agreement.

“Owner” shall mean Golf Realty Fund, a California limited partnership and any successor or assignee to all or any portion of the right, title, and interest of Golf Realty Fund _____ in and to ownership of all or a portion of the Property.

“Party” or “Parties” shall mean either City or Owner or both, as determined by the context.

“Project” shall mean all on-site and off-site improvements that Owner is authorized and/or required to construct with respect to each parcel of the Property, as provided in this Agreement and the Development Regulations, as the same may be modified or amended from time to time consistent with this Agreement and applicable law.

“Property” is described in Exhibit A and depicted on Exhibit B.

“Public Benefit Fee” shall have the meaning ascribed in Section 3.1 of this Agreement.

“Subsequent Development Approvals” shall mean all discretionary development and building approvals that Owner is required to obtain to Develop the Project on and with respect to the Property after the Agreement Date consistent with the Development Regulations and this Agreement, with the understanding that except as expressly set forth herein City shall not have

the right subsequent to the Effective Date and during the Term of this Agreement to adopt or impose requirements for any such Subsequent Development Approvals that do not exist as of the Agreement Date.

“Term” shall have the meaning ascribed in Section 2.4 of this Agreement.

“Termination Date” and “Lot Termination Date” shall have the meaning ascribed in Section 2.4 of this Agreement.

“Transfer” shall have the meaning ascribed in Section 11 of this Agreement.

2. General Provisions.

2.1 Plan Consistency, Zoning Implementation.

This Agreement and the Development Regulations applicable to the Property will cause City’s zoning and other land use regulations for the Property to be consistent with the General Plan.

2.2 Binding Effect of Agreement.

The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out in accordance with the terms of this Agreement.

2.3 Owner Representations and Warranties Regarding Ownership of the Property and Related Matters Pertaining to this Agreement.

Owner and each person executing this Agreement on behalf of Owner hereby represents and warrants to City as follows: (i) that Owner is the owner of the fee simple title to the Property; (ii) Owner or any co-owner comprising Owner is a legal entity that such entity is duly formed and existing and is authorized to do business in the State of California; (iii) if Owner or any co-owner comprising Owner is a natural person that such natural person has the legal right and capacity to execute this Agreement; (iv) that all actions required to be taken by all persons and entities comprising Owner to enter into this Agreement have been taken and that Owner has the legal authority to enter into this Agreement; (v) that Owner’s entering into and performing its obligations set forth in this Agreement will not result in a violation of any obligation, contractual or otherwise, that Owner or any person or entity comprising Owner has to any third party; (vi) that neither Owner nor any co-owner comprising Owner is the subject of any voluntary or involuntary petition; and (vii) that Owner has no actual knowledge of any pending or threatened claims of any person or entity affecting the validity of any of the representations and warranties set forth in clauses (i)-(vi), inclusive, or affecting Owner’s authority or ability to enter into or perform any of its obligations set forth in this Agreement.

2.4 Term.

The term of this Agreement (the “Term”) shall commence on the Effective Date and shall terminate on the “Termination Date.”

Notwithstanding any other provision set forth in this Agreement to the contrary, if either Party reasonably determines that the Effective Date of this Agreement will not occur because (i) the Adopting Ordinance or any of the Development Regulations approved on or before the Agreement Date for the Project has/have been disapproved by City's voters at a referendum election or (ii) a final non-appealable judgment is entered in a judicial action challenging the validity or legality of the Adopting Ordinance, this Agreement, and/or any of the Development Regulations for the Project approved on or before the Agreement Date such that this Agreement and/or any of such Development Regulations is/are invalid and unenforceable in whole or in such a substantial part that the judgment substantially impairs such Party's rights or substantially increases its obligations or risks hereunder or thereunder, then such Party shall have the right to terminate this Agreement upon delivery of a written notice of termination to the other Party, in which event neither Party shall have any further rights or obligations hereunder except that Owner's indemnity obligations set forth in Article 10 shall remain in full force and effect and shall be enforceable, and the Development Regulations applicable to the Project and the Property only (but not those general Development Regulations applicable to other properties in the City) shall similarly be null and void at such time.

The Termination Date shall be the earliest of the following dates: (i) the tenth (10th) anniversary of the Effective Date, as said date may be extended in accordance with Section 5 of this Agreement; (ii) such earlier date that this Agreement may be terminated in accordance with Articles 5, 7, and/or Section 8.3 of this Agreement and/or Sections 65865.1 and/or 65868 of the Development Agreement Statute; (iii) as to any separate legal lot within the Property (but not as to the balance of the Property or the portion thereof that remains subject to this Agreement at such time), upon the "Lot Termination Date" (defined below); or (iv) completion of the Project in accordance with the terms of this Agreement, including Owner's complete satisfaction, performance, and payment, as applicable, of all Development Exactions, the issuance of all required final occupancy permits, and acceptance by City or applicable public agency(ies) or private entity(ies) of all required offers of dedication.

As used herein, the term "Lot Termination Date" for any separate legal lot within the Property means the date on which all of the following conditions have been satisfied with respect to said lot: (i) the lot has been finally subdivided and sold or leased (for a period longer than one year), individually or in a "bulk" of four or fewer lots, to a member of the public or other ultimate user; (ii) a final Certificate of Occupancy or "Release of Utilities" has been issued for the building or buildings approved for construction on said lot.

Notwithstanding any other provision set forth in this Agreement to the contrary, the provisions set forth in Article 10 and Section 13.10 (as well as any other Owner obligations set forth in this Agreement that are expressly written to survive the Termination Date) shall survive the Termination Date of this Agreement.

3. Public Benefits.

3.1 Public Benefit Fee.

As consideration for City's approval and performance of its obligations set forth in this Agreement, Owner shall pay to City a fee that shall be in addition to any other fee or charge to which the Property and the Project would otherwise be subject (herein, the "Public Benefit Fee")

in the sum of (i) Ninety-three thousand _____ Dollars (\$ 93,000 _____) per each residential dwelling units; and (ii) Ten dollars (\$10) per square foot of construction for the proposed golf clubhouse; and (iii) Ten dollars (\$10) per square foot of new construction to the existing tennis clubhouse, with the unpaid balance of said Public Benefit Fee increased on the first January 1 following the Effective Date of this Agreement by the percentage increase in the CPI Index between the Effective Date and said January 1st date (the first "Adjustment Date") and thereafter with the unpaid balance of said Public Benefit Fee increased on each subsequent January 1 during the Term of this Agreement (each, an "Adjustment Date") by the percentage increase in the CPI Index in the year prior to the applicable Adjustment Date. The amount of the percentage increase in the CPI Index on the applicable Adjustment Dates shall in each instance be calculated based on the then most recently available CPI Index figures such that, for example, if the Effective Date of this Agreement falls on July 1 and the most recently available CPI Index figure on the first Adjustment Date (January 1 of the following year) is the CPI Index for November of the preceding year, the percentage increase in the CPI Index for that partial year (a 6-month period) shall be calculated by comparing the CPI Index for November of the preceding year with the CPI Index for May of the preceding year (a 6-month period). In no event, however, shall application of the CPI Index reduce the amount of the Public Benefit Fee (or unpaid portion thereof) below the amount in effect prior to any applicable Adjustment Date. Owner shall pay the Public Benefit Fee at the following time(s): (i) As to the residential dwelling units, at the issuance of the building permit for each individual residential unit; and (ii) As to the golf clubhouse and tennis clubhouse construction, at the time each building permit is issued. Notwithstanding any other provision set forth in this Agreement to the contrary, during the Term of this Agreement City shall not increase the Public Benefit Fee except pursuant to the CPI Index as stated in this Section 3.1. Owner acknowledges by its approval and execution of this Agreement that it is voluntarily agreeing to pay the Public Benefit Fee, that its obligation to pay the Public Benefit Fee is an essential term of this Agreement and is not severable from City's obligations and Owner's vesting rights to be acquired hereunder, and that Owner expressly waives any constitutional, statutory, or common law right it might have in the absence of this Agreement to protest or challenge the payment of such fee on any ground whatsoever, including without limitation pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, California Constitution Article I Section 19, the Mitigation Fee Act (California Government Code Section 66000 *et seq.*), or otherwise. In addition to any other remedy set forth in this Agreement for Owner's default, if Owner shall fail to timely pay any portion of the Public Benefit Fee when due City shall have the right to withhold issuance of any further building permits, occupancy permits, or other development or building permits for the Project.

3.2 Other Public Benefits.

The development of the Project will include the addition of additional Visitor-Serving Uses consistent with the City's Coastal Land Use Plan and will provide a unique amenity for those visitors whose interests include tennis. It is anticipated that the Property will continue to host numerous events of significant social and economic benefit to the City such as the Toshiba Classic and other events to the benefit of the City, its citizens, businesses and charitable institutions.

4. Development Project.

4.1 Applicable Regulations; Owner's Vested Rights and City's Reservation of Discretion With Respect to Subsequent Development Approvals.

Other than as expressly set forth in this Agreement, during the Term of this Agreement, (i) Owner shall have the vested right to Develop the Project on and with respect to the Property in accordance with the terms of the Development Regulations and this Agreement and (ii) City shall not prohibit or prevent development of the Property on grounds inconsistent with the Development Regulations or this Agreement. Notwithstanding the foregoing, nothing herein is intended to limit or restrict City's discretion with respect to (i) review and approval requirements contained in the Development Regulations, (ii) exercise of any discretionary authority City retains under the Development Regulations, (iii) the approval, conditional approval, or denial of any Subsequent Development Approvals that are required for Development of the Project as of the Effective Date, or (iv) any environmental approvals that may be required under CEQA or any other federal or state law or regulation in conjunction with any Subsequent Development Approvals that may be required for the Project, and in this regard, as to future actions referred to in clauses (i)-(iv) of this sentence, City reserves its full discretion to the same extent City would have such discretion in the absence of this Agreement. In addition, it is understood and agreed that nothing in this Agreement is intended to vest Owner's rights with respect to any laws, regulations, rules, or official policies of any other governmental agency or public utility company with jurisdiction over the Property or the Project; or any applicable federal or state laws, regulations, rules, or official policies that may be inconsistent with this Agreement and that override or supersede the provisions set forth in this Agreement, and regardless of whether such overriding or superseding laws, regulations, rules, or official policies are adopted or applied to the Property or the Project prior or subsequent to the Agreement Date.

Owner has expended and will continue to expend substantial amounts of time and money planning and preparing for Development of the Project. Owner represents and City acknowledges that Owner would not make these expenditures without this Agreement, and that Owner is and will be making these expenditures in reasonable reliance upon its vested rights to Develop the Project as set forth in this Agreement.

Owner may apply to City for permits or approvals necessary to modify or amend the Development specified in the Development Regulations, provided that the request does not propose an increase in the maximum density, intensity, height, or size of proposed structures, or a change in use that generates more peak hour traffic or more daily traffic and, in addition, Owner may apply to City for approval of minor amendments to existing tentative tract maps, tentative parcel maps, or associated conditions of approval, consistent with City of Newport Beach Municipal Code section 19.12.090. This Agreement does not constitute a promise or commitment by City to approve any such permit or approval, or to approve the same with or without any particular requirements or conditions, and City's discretion with respect to such matters shall be the same as it would be in the absence of this Agreement.

4.2 No Conflicting Enactments.

Except to the extent City reserves its discretion as expressly set forth in this Agreement, during the Term of this Agreement City shall not apply to the Project or the Property any

ordinance, policy, rule, regulation, or other measure relating to Development of the Project that is enacted or becomes effective after the Effective Date to the extent it conflicts with this Agreement. This Section 4.2 shall not restrict City's ability to enact an ordinance, policy, rule, regulation, or other measure applicable to the Project pursuant to California Government Code Section 65866 consistent with the procedures specified in Section 4.3 of this Agreement. In *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, the California Supreme Court held that a construction company was not exempt from a city's growth control ordinance even though the city and construction company had entered into a consent judgment (tantamount to a contract under California law) establishing the company's vested rights to develop its property consistent with the zoning. The California Supreme Court reached this result because the consent judgment failed to address the timing of development. The Parties intend to avoid the result of the *Pardee* case by acknowledging and providing in this Agreement that Owner shall have the vested right to Develop the Project on and with respect to the Property at the rate, timing, and sequencing that Owner deems appropriate within the exercise of Owner's sole subjective business judgment, provided that such Development occurs in accordance with this Agreement and the Development Regulations, notwithstanding adoption by City's electorate of an initiative to the contrary after the Effective Date. No City moratorium or other similar limitation relating to the rate, timing, or sequencing of the Development of all or any part of the Project and whether enacted by initiative or another method, affecting subdivision maps, building permits, occupancy certificates, or other entitlement to use, shall apply to the Project to the extent such moratorium or other similar limitation restricts Owner's vested rights in this Agreement or otherwise conflicts with the express provisions of this Agreement.

4.3 Reservations of Authority.

Notwithstanding any other provision set forth in this Agreement to the contrary, the laws, rules, regulations, and official policies set forth in this Section 4.3 shall apply to and govern the Development of the Project on and with respect to the Property.

4.3.1 Procedural Regulations. Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure shall apply to the Property, provided that such procedural regulations are adopted and applied City-wide or to all other properties similarly situated in City.

4.3.2 Processing and Permit Fees. City shall have the right to charge and Owner shall be required to pay all applicable processing and permit fees to cover the reasonable cost to City of processing and reviewing applications and plans for any required Subsequent Development Approvals, building permits, excavation and grading permits, encroachment permits, and the like, for performing necessary studies and reports in connection therewith, inspecting the work constructed or installed by or on behalf of Owner, and monitoring compliance with any requirements applicable to Development of the Project, all at the rates in effect at the time fees are due.

4.3.3 Consistent Future City Regulations. City ordinances, resolutions, regulations, and official policies governing Development which do not conflict with the Development Regulations, or with respect to such regulations that do conflict, where Owner has consented in writing to the regulations, shall apply to the Property.

4.3.4 Development Exactions Applicable to Property. During the Term of this Agreement, Owner shall be required to satisfy and pay all Development Exactions at the time performance or payment is due to the same extent and in the same amount(s) that would apply to Owner and the Project in the absence of this Agreement; provided, however, that to the extent the scope and extent of a particular Development Exaction (excluding any development impact fee) for the Project has been established and fixed by City in the conditions of approval for any of the Development Regulations approved on or before the Agreement Date City shall not alter, increase, or modify said Development Exaction in a manner that is inconsistent with such Development Regulations without Owner's prior written consent or as may be otherwise required pursuant to overriding federal or state laws or regulations (Section 4.3.5 hereinbelow). In addition, nothing in this Agreement is intended or shall be deemed to vest Owner against the obligation to pay any of the following (which are not included within the definition of "Development Exactions") in the full amount that would apply in the absence of this Agreement: (i) City's normal fees for processing, environmental assessment and review, tentative tract and parcel map review, plan checking, site review and approval, administrative review, building permit, grading permit, inspection, and similar fees imposed to recover City's costs associated with processing, reviewing, and inspecting project applications, plans, and specifications; (ii) fees and charges levied by any other public agency, utility, district, or joint powers authority, regardless of whether City collects those fees and charges; or (iii) community facility district special taxes or special district assessments or similar assessments, business license fees, bonds or other security required for public improvements, transient occupancy taxes, sales taxes, property taxes, sewer lateral connection fees, water service connection fees, new water meter fees, and the Property Development Tax payable under Chapter 3.12 of City's Municipal Code.

4.3.5 Overriding Federal and State Laws and Regulations. Federal and state laws and regulations that override Owner's vested rights set forth in this Agreement shall apply to the Property, together with any City ordinances, resolutions, regulations, and official policies that are necessary to enable City to comply with the provisions of any such overriding federal or state laws and regulations, provided that (i) Owner does not waive its right to challenge or contest the validity of any such purportedly overriding federal, state, or City law or regulation; and (ii) upon the discovery of any such overriding federal, state, or City law or regulation that prevents or precludes compliance with any provision of this Agreement, City or Owner shall provide to the other Party a written notice identifying the federal, state, or City law or regulation, together with a copy of the law or regulation and a brief written statement of the conflict(s) between that law or regulation and the provisions of this Agreement. Promptly thereafter City and Owner shall meet and confer in good faith in a reasonable attempt to determine whether a modification or suspension of this Agreement, in whole or in part, is necessary to comply with such overriding federal, state, or City law or regulation. In such negotiations, City and Owner agree to preserve the terms of this Agreement and the rights of Owner as derived from this Agreement to the maximum feasible extent while resolving the conflict. City agrees to cooperate with Owner at no cost to City in resolving the conflict in a manner which minimizes any financial impact of the conflict upon Owner. City also agrees to process in a prompt manner Owner's proposed changes to the Project and any of the Development Regulations as may be necessary to comply with such overriding federal, state, or City law or regulation; provided, however, that the approval of such changes by City shall be subject to the discretion of City, consistent with this Agreement.

4.3.6 Public Health and Safety. Any City ordinance, resolution, rule, regulation, program, or official policy that is necessary to protect persons on the Property or in the immediate vicinity from conditions dangerous to their health or safety, as reasonably determined by City, shall apply to the Property, even though the application of the ordinance, resolution, rule, regulation, program, or official policy would result in the impairment of Owner's vested rights under this Agreement.

4.3.7 Uniform Building Standards. Existing and future building and building-related standards set forth in the uniform codes adopted and amended by City from time to time, including building, plumbing, mechanical, electrical, housing, swimming pool, and fire codes, and any modifications and amendments thereof shall all apply to the Project and the Property to the same extent that the same would apply in the absence of this Agreement.

4.3.8 Public Works Improvements. To the extent Owner constructs or installs any public improvements, works, or facilities, the City standards in effect for such public improvements, works, or facilities at the time of City's issuance of a permit, license, or other authorization for construction or installation of same shall apply.

4.3.9 No Guarantee or Reservation of Utility Capacity. Notwithstanding any other provision set forth in this Agreement to the contrary, nothing in this Agreement is intended or shall be interpreted to require City to guarantee or reserve to or for the benefit of Owner or the Property any utility capacity, service, or facilities that may be needed to serve the Project, whether domestic or reclaimed water service, sanitary sewer transmission or wastewater treatment capacity, downstream drainage capacity, or otherwise, and City shall have the right to limit or restrict Development of the Project if and to the extent that City reasonably determines that inadequate utility capacity exists to adequately serve the Project at the time Development is scheduled to commence.

4.4 Tentative Subdivision Maps.

City agrees that Owner may file and process new and existing vesting tentative maps for the Property consistent with California Government Code sections 66498.1-66498.9 and City of Newport Beach Municipal Code chapter 19.20. Pursuant to the applicable provision of the California Subdivision Map Act (California Government Code section 66452.6(a)), the life of any tentative subdivision map approved for the Property, whether designated a "vesting tentative map" or otherwise, shall be extended for the Term of this Agreement.

5. Amendment or Cancellation of Agreement.

Other than modifications of this Agreement under Section 8.3 of this Agreement, this Agreement may be amended or canceled in whole or in part only by mutual written and executed consent of the Parties in compliance with California Government Code section 65868 and City of Newport Beach Municipal Code section 15.45.060 or by unilateral termination by City in the event of an uncured default of Owner.

6. Enforcement.

Unless this Agreement is amended, canceled, modified, or suspended as authorized herein or pursuant to California Government Code section 65869.5, this Agreement shall be

enforceable by either Party despite any change in any applicable general or specific plan, zoning, subdivision, or building regulation or other applicable ordinance or regulation adopted by City (including by City's electorate) that purports to apply to any or all of the Property.

7. Annual Review of Owner's Compliance With Agreement.

7.1 General.

City shall review this Agreement once during every twelve (12) month period following the Effective Date for compliance with the terms of this Agreement as provided in Government Code Section 65865.1. Owner (including any successor to the owner executing this Agreement on or before the Agreement Date) shall pay City a reasonable fee in an amount City may reasonably establish from time to time to cover the actual and necessary costs for the annual review. City's failure to timely provide or conduct an annual review shall not constitute a Default hereunder by City.

7.2 Owner Obligation to Demonstrate Good Faith Compliance.

During each annual review by City, Owner is required to demonstrate good faith compliance with the terms of the Agreement. Owner agrees to furnish such evidence of good faith compliance as City, in the reasonable exercise of its discretion, may require, thirty (30) days prior to each anniversary of the Effective Date during the Term.

7.3 Procedure.

The City Council of City shall conduct a duly noticed hearing and shall determine, on the basis of substantial evidence, whether or not Owner has, for the period under review, complied with the terms of this Agreement. If the City Council finds that Owner has so complied, the annual review shall be concluded. If the City Council finds, on the basis of substantial evidence, that Owner has not so complied, written notice shall be sent to Owner by first class mail of the City Council's finding of non-compliance, and Owner shall be given at least ten (10) days to cure any noncompliance that relates to the payment of money and thirty (30) days to cure any other type of noncompliance. If a cure not relating to the payment of money cannot be completed within thirty (30) days for reasons which are beyond the control of Owner, Owner must commence the cure within such thirty (30) days and diligently pursue such cure to completion. If Owner fails to cure such noncompliance within the time(s) set forth above, such failure shall be considered to be a Default and City shall be entitled to exercise the remedies set forth in Article 8 below.

7.4 Annual Review a Non-Exclusive Means for Determining and Requiring Cure of Owner's Default.

The annual review procedures set forth in this Article 7 shall not be the exclusive means for City to identify a Default by Owner or limit City's rights or remedies for any such Default.

8. Events of Default.

8.1 General Provisions.

In the event of any material default, breach, or violation of the terms of this Agreement ("Default"), the Party alleging a Default shall have the right to deliver a written notice (each, a "Notice of Default") to the defaulting Party. The Notice of Default shall specify the nature of the alleged Default and a reasonable manner and sufficient period of time (ten (10) days if the Default relates to the failure to timely make a monetary payment due hereunder and not less than thirty (30) days in the event of non-monetary Defaults) in which the Default must be cured (the "Cure Period"). During the Cure Period, the Party charged shall not be considered in Default for the purposes of termination of this Agreement or institution of legal proceedings. If the alleged Default is cured within the Cure Period, then the Default thereafter shall be deemed not to exist. If a non-monetary Default cannot be cured during the Cure Period with the exercise of commercially reasonable diligence, the defaulting Party must promptly commence to cure as quickly as possible, and in no event later than thirty (30) days after it receives the Notice of Default, and thereafter diligently pursue said cure to completion.

8.2 Default by Owner.

If Owner is alleged to have committed a non-monetary Default and it disputes the claimed Default, it may make a written request for an appeal hearing before the City Council within ten (10) days of receiving the Notice of Default, and a public hearing shall be scheduled at the next available City Council meeting to consider Owner's appeal of the Notice of Default. Failure to appeal a Notice of Default to the City Council within the ten (10) day period shall waive any right to a hearing on the claimed Default. If Owner's appeal of the Notice of Default is timely and in good faith but after a public hearing of Owner's appeal the City Council concludes that Owner is in Default as alleged in the Notice of Default, the accrual date for commencement of the thirty (30) day Cure Period provided in Section 8.1 shall be extended until the City Council's denial of Owner's appeal is communicated to Owner.

8.3 City's Option to Terminate Agreement.

In the event of an alleged Owner Default, City may not terminate this Agreement without first delivering a written Notice of Default and providing Owner with the opportunity to cure the Default within the Cure Period, as provided in Section 8.1, and complying with Section 8.2 if Owner timely appeals any Notice of Default with respect to a non-monetary Default. A termination of this Agreement by City shall be valid only if good cause exists and is supported by evidence presented to the City Council at or in connection with a duly noticed public hearing to establish the existence of a Default. The validity of any termination may be judicially challenged by Owner. Any such judicial challenge must be brought within thirty (30) days of service on Owner, by first class mail, postage prepaid, of written notice of termination by City or a written notice of City's determination of an appeal of the Notice of Default as provided in Section 8.2.

8.4 Default by City.

If Owner alleges a City Default and alleges that the City has not cured the Default within the Cure Period, Owner may pursue any equitable remedy available to it under this Agreement, including, without limitation, an action for a writ of mandamus, injunctive relief, or specific

performance of City's obligations set forth in this Agreement. Upon a City Default, any resulting delays in Owner's performance hereunder shall neither be a Owner Default nor constitute grounds for termination or cancellation of this Agreement by City and shall, at Owner's option (and provided Owner delivers written notice to City within thirty (30) days of the commencement of the alleged City Default), extend the Term for a period equal to the length of the delay.

8.5 Waiver.

Failure or delay by either Party in delivering a Notice of Default shall not waive that Party's right to deliver a future Notice of Default of the same or any other Default.

8.6 Specific Performance Remedy.

Due to the size, nature, and scope of the Project, it will not be practical or possible to restore the Property to its pre-existing condition once implementation of this Agreement has begun. After such implementation, both Owner and City may be foreclosed from other choices they may have had to plan for the development of the Property, to utilize the Property or provide for other benefits and alternatives. Owner and City have invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement. It is not possible to determine the sum of money which would adequately compensate Owner or City for such efforts. For the above reasons, City and Owner agree that damages would not be an adequate remedy if either City or Owner fails to carry out its obligations under this Agreement. Therefore, specific performance of this Agreement is necessary to compensate Owner if City fails to carry out its obligations under this Agreement or to compensate City if Owner fails to carry out its obligations under this Agreement.

8.7 Monetary Damages.

The Parties agree that monetary damages shall not be an available remedy for either Party for a Default hereunder by the other Party; provided, however, that (i) nothing in this Section 8.7 is intended or shall be interpreted to limit or restrict City's right to recover the Public Benefit Fees due from Owner as set forth herein; and (ii) nothing in this Section 8.7 is intended or shall be interpreted to limit or restrict Owner's indemnity obligations set forth in Article 10 or the right of the prevailing Party in any Action to recover its litigation expenses, as set forth in Section 8.10.

8.8 Additional City Remedy for Owner's Default.

In the event of any Default by Owner, in addition to any other remedies which may be available to City, whether legal or equitable, City shall be entitled to receive and retain any Development Exactions applicable to the Project or the Property, including any fees, grants, dedications, or improvements to public property which it may have received prior to Owner's Default without recourse from Owner or its successors or assigns.

8.9 No Personal Liability of City Officials, Employees, or Agents.

No City official, employee, or agent shall have any personal liability hereunder for a Default by City of any of its obligations set forth in this Agreement.

8.10 Recovery of Legal Expenses by Prevailing Party in Any Action.

In any judicial proceeding, arbitration, or mediation (collectively, an "Action") between the Parties that seeks to enforce the provisions of this Agreement or arises out of this Agreement, the prevailing Party shall recover all of its actual and reasonable costs and expenses, regardless of whether they would be recoverable under California Code of Civil Procedure section 1033.5 or California Civil Code section 1717 in the absence of this Agreement. These costs and expenses include expert witness fees, attorneys' fees, and costs of investigation and preparation before initiation of the Action. The right to recover these costs and expenses shall accrue upon initiation of the Action, regardless of whether the Action is prosecuted to a final judgment or decision.

9. Force Majeure.

Neither Party shall be deemed to be in Default where failure or delay in performance of any of its obligations under this Agreement is caused, through no fault of the Party whose performance is prevented or delayed, by floods, earthquakes, other acts of God, fires, wars, riots or similar hostilities, strikes or other labor difficulties, state or federal regulations, or court actions. Except as specified above, nonperformance shall not be excused because of the act or omission of a third person. In no event shall the occurrence of an event of force majeure operate to extend the Term of this Agreement. In addition, in no event shall the time for performance of a monetary obligation, including without limitation Owner's obligation to pay Public Benefit Fees, be extended pursuant to this Section.

10. Indemnity Obligations of Owner.

10.1 Indemnity Arising From Acts or Omissions of Owner.

Owner shall indemnify, defend, and hold harmless City and City's officials, employees, agents, attorneys, and contractors (collectively, the "City's Affiliated Parties") from and against all suits, claims, liabilities, losses, damages, penalties, obligations, and expenses (including but not limited to attorneys' fees and costs) (collectively, a "Claim") that may arise, directly or indirectly, from the acts, omissions, or operations of Owner or Owner's agents, contractors, subcontractors, agents, or employees in the course of Development of the Project or any other activities of Owner relating to the Property or pursuant to this Agreement. City shall have the right to select and retain counsel to defend any Claim filed against City and/or any of City's Affiliated Parties, and Owner shall pay the reasonable cost for defense of any Claim. The indemnity provisions in this Section 10.1 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

10.2 Third Party Litigation.

In addition to its indemnity obligations set forth in Section 10.1, Owner shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against any Claim against

City or City's Affiliated Parties seeking to attack, set aside, void, or annul the approval of this Agreement, the Adopting Ordinance, any of the Development Regulations for the Project (including without limitation any actions taken pursuant to CEQA with respect thereto), any Subsequent Development Approval, or the approval of any permit granted pursuant to this Agreement. Said indemnity obligation shall include payment of attorney's fees, expert witness fees, and court costs. City shall promptly notify Owner of any such Claim and City shall cooperate with Owner in the defense of such Claim. If City fails to promptly notify Owner of such Claim, Owner shall not be responsible to indemnify, defend, and hold City harmless from such Claim until Owner is so notified and if City fails to cooperate in the defense of a Claim Owner shall not be responsible to defend, indemnify, and hold harmless City during the period that City so fails to cooperate or for any losses attributable thereto. City shall be entitled to retain separate counsel to represent City against the Claim and the City's defense costs for its separate counsel shall be included in Owner's indemnity obligation, provided that such counsel shall reasonably cooperate with Owner in an effort to minimize the total litigation expenses incurred by Owner. In the event either City or Owner recovers any attorney's fees, expert witness fees, costs, interest, or other amounts from the party or parties asserting the Claim, Owner shall be entitled to retain the same (provided it has fully performed its indemnity obligations hereunder). The indemnity provisions in this Section 10.2 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

10.3 Environmental Indemnity.

In addition to its indemnity obligations set forth in Section 10.1, from and after the Agreement Date Owner shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against any and all Claims for personal injury or death, property damage, economic loss, statutory penalties or fines, and damages of any kind or nature whatsoever, including without limitation attorney's fees, expert witness fees, and costs, based upon or arising from any of the following: (i) the actual or alleged presence of any Hazardous Substance on or under any of the Property in violation of any applicable Environmental Law; (ii) the actual or alleged migration of any Hazardous Substance from the Property through the soils or groundwater to a location or locations off of the Property; and (iii) the storage, handling, transport, or disposal of any Hazardous Substance on, to, or from the Property and any other area disturbed, graded, or developed by Owner in connection with Owner's Development of the Project. The foregoing indemnity obligations shall not apply to any Hazardous Substance placed or stored on a separate legal lot within the Property after the Lot Termination Date for said lot, as provided in Section 2.4 of this Agreement. The indemnity provisions in this Section 10.3 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

11. Assignment.

Owner shall have the right to sell, transfer, or assign (hereinafter, collectively, a "Transfer") Owner's fee title to the Property, in whole or in part, to any person, partnership, joint venture, firm, or corporation (which successor, as of the effective date of the Transfer, shall become the "Owner" under this Agreement) at any time from the Agreement Date until the Termination Date; provided, however, that no such Transfer shall violate the provisions of the Subdivision Map Act (Government Code Section 66410 et seq.) or City's local subdivision

ordinance and any such Transfer shall include the assignment and assumption of Owner's rights, duties, and obligations set forth in or arising under this Agreement as to the Property or the portion thereof so Transferred and shall be made in strict compliance with the following conditions precedent: (i) no transfer or assignment of any of Owner's rights or interest under this Agreement shall be made unless made together with the Transfer of all or a part of the Property; and (ii) prior to the effective date of any proposed Transfer, Owner (as transferor) shall notify City, in writing, of such proposed Transfer and deliver to City a written assignment and assumption, executed in recordable form by the transferring and successor Owner and in a form subject to the reasonable approval of the City Attorney of City (or designee), pursuant to which the transferring Owner assigns to the successor Owner and the successor Owner assumes from the transferring Owner all of the rights and obligations of the transferring Owner with respect to the Property or portion thereof to be so Transferred, including in the case of a partial Transfer the obligation to perform such obligations that must be performed off of the portion of the Property so Transferred that are a condition precedent to the successor Owner's right to develop the portion of the Property so Transferred.

Notwithstanding any Transfer, the transferring Owner shall continue to be jointly and severally liable to City, together with the successor Owner, to perform all of the transferred obligations set forth in or arising under this Agreement unless the transferring Owner is given a release in writing by City, which release shall be only with respect to the portion of the Property so Transferred in the event of a partial Transfer. City shall provide such a release upon the transferring Owner's full satisfaction of all of the following conditions: (i) the transferring Owner no longer has a legal or equitable interest in the portion of the Property so Transferred other than as a beneficiary under a deed of trust; (ii) the transferring Owner is not then in Default under this Agreement and no condition exists that with the passage of time or the giving of notice, or both, would constitute a Default hereunder; (iii) the transferring Owner has provided City with the notice and the fully executed written and recordable assignment and assumption agreement required as set forth in the first paragraph of this Section 11; and (iv) the successor Owner either (A) provides City with substitute security equivalent to any security previously provided by the transferring Owner to City to secure performance of the successor Owner's obligations hereunder with respect to the Property or the portion of the Property so Transferred or (B) if the transferred obligation in question is not a secured obligation, the successor Owner either provides security reasonably satisfactory to City or otherwise demonstrates to City's reasonable satisfaction that the successor Owner has the financial resources or commitments available to perform the transferred obligation at the time and in the manner required under this Agreement and the Development Regulations for the Project.

12. Mortgagee Rights.

12.1 Encumbrances on Property.

The Parties agree that this Agreement shall not prevent or limit Owner in any manner from encumbering the Property, any part of the Property, or any improvements on the Property with any Mortgage securing financing with respect to the construction, development, use, or operation of the Project.

12.2 Mortgagee Protection.

This Agreement shall be superior and senior to the lien of any Mortgage. Nevertheless, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. Any acquisition or acceptance of title or any right or interest in the Property or part of the Property by a Mortgagee (whether due to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, or otherwise) shall be subject to all of the terms and conditions of this Agreement. Any Mortgagee who takes title to the Property or any part of the Property shall be entitled to the benefits arising under this Agreement.

12.3 Mortgagee Not Obligated.

Notwithstanding the provisions of this Section 12.3, a Mortgagee will not have any obligation or duty under the terms of this Agreement to perform the obligations of Owner or other affirmative covenants of Owner, or to guarantee this performance except that: (i) the Mortgagee shall have no right to develop the Project under the Development Regulations without fully complying with the terms of this Agreement; and (ii) to the extent that any covenant to be performed by Owner is a condition to the performance of a covenant by City, that performance shall continue to be a condition precedent to City's performance.

12.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure.

Each Mortgagee shall, upon written request to City, be entitled to receive written notice from City of: (i) the results of the periodic review of compliance specified in Article 7 of this Agreement, and (ii) any default by Owner of its obligations set forth in this Agreement.

Each Mortgagee shall have a further right, but not an obligation, to cure the Default within ten (10) days after receiving a Notice of Default with respect to a monetary Default and within thirty (30) days after receiving a Notice of Default with respect to a non-monetary Default. If the Mortgagee can only remedy or cure a non-monetary Default by obtaining possession of the Property, then the Mortgagee shall have the right to seek to obtain possession with diligence and continuity through a receiver or otherwise, and to remedy or cure the non-monetary Default within thirty (30) days after obtaining possession and, except in case of emergency or to protect the public health or safety, City may not exercise any of its judicial remedies set forth in this Agreement to terminate or substantially alter the rights of the Mortgagee until expiration of the thirty (30)-day period. In the case of a non-monetary Default that cannot with diligence be remedied or cured within thirty (30) days, the Mortgagee shall have additional time as is reasonably necessary to remedy or cure the Default, provided the Mortgagee promptly commences to cure the non-monetary Default within thirty (30) days and diligently prosecutes the cure to completion.

13. Miscellaneous Terms.

13.1 Notices.

Any notice or demand that shall be required or permitted by law or any provision of this Agreement shall be in writing. If the notice or demand will be served upon a Party, it either shall be personally delivered to the Party; deposited in the United States mail, certified, return receipt requested, and postage prepaid; or delivered by a reliable courier service that provides a receipt

showing date and time of delivery with courier charges prepaid. The notice or demand shall be addressed as follows:

TO CITY: City of Newport Beach
3300 Newport Boulevard
Post Office Box 1768
Newport Beach, California 92663-3884
Attn: City Manager

With a copy to: City Attorney
City of Newport Beach
3300 Newport Boulevard
Post Office Box 1768
Newport Beach, California 92663-3884

TO OWNER: Golf Realty Fund
One Upper Newport Plaza
Newport Beach, California 92660
Attn: Robert O Hill

With a copy to: Tim Paone
Theodora Oringer PC
535 Anton Boulevard, Ninth Floor
Costa Mesa, CA 92626

Either Party may change the address stated in this Section 13.1 by delivering notice to the other Party in the manner provided in this Section 13.1, and thereafter notices to such Party shall be addressed and submitted to the new address. Notices delivered in accordance with this Agreement shall be deemed to be delivered upon the earlier of: (i) the date received or (iii) three business days after deposit in the mail as provided above.

13.2 Project as Private Undertaking.

The Development of the Project is a private undertaking. Neither Party is acting as the agent of the other in any respect, and each Party is an independent contracting entity with respect to the terms, covenants, and conditions set forth in this Agreement. This Agreement forms no partnership, joint venture, or other association of any kind. The only relationship between the Parties is that of a government entity regulating the Development of private property by the owner of the property.

13.3 Cooperation.

Each Party shall cooperate with and provide reasonable assistance to the other Party to the extent consistent with and necessary to implement this Agreement. Upon the request of a Party at any time, the other Party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record the required instruments and writings and take any actions

as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

13.4 Estoppel Certificates.

At any time, either Party may deliver written notice to the other Party requesting that that Party certify in writing that, to the best of its knowledge: (i) this Agreement is in full force and effect and is binding on the Party; (ii) this Agreement has not been amended or modified either orally or in writing or, if this Agreement has been amended, the Party providing the certification shall identify the amendments or modifications; and (iii) the requesting Party is not in Default in the performance of its obligations under this Agreement and no event or situation has occurred that with the passage of time or the giving of Notice or both would constitute a Default or, if such is not the case, then the other Party shall describe the nature and amount of the actual or prospective Default.

The Party requested to furnish an estoppel certificate shall execute and return the certificate within thirty (30) days following receipt. Requests for the City to furnish an estoppel certificate shall include reimbursement for all administrative costs incurred by the City including reasonable attorneys fees incurred by the City in furnishing an estoppels certificate.

13.5 Rules of Construction.

The singular includes the plural; the masculine and neuter include the feminine; "shall" is mandatory; and "may" is permissive.

13.6 Time Is of the Essence.

Time is of the essence regarding each provision of this Agreement as to which time is an element.

13.7 Waiver.

The failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, and failure by a Party to exercise its rights upon a Default by the other Party, shall not constitute a waiver of that Party's right to demand strict compliance by the other Party in the future.

13.8 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be identical and may be introduced in evidence or used for any other purpose without any other counterpart, but all of which shall together constitute one and the same agreement.

13.9 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter addressed in this Agreement.

13.10 Severability.

The Parties intend that each and every obligation of the Parties is interdependent and interrelated with the other, and if any provision of this Agreement or the application of the provision to any Party or circumstances shall be held invalid or unenforceable to any extent, it is the intention of the Parties that the remainder of this Agreement or the application of the provision to persons or circumstances shall be rendered invalid or unenforceable. The Parties intend that neither Party shall receive any of the benefits of the Agreement without the full performance by such Party of all of its obligations provided for under this Agreement. Without limiting the generality of the foregoing, the Parties intend that Owner shall not receive any of the benefits of this Agreement if any of Owner's obligations are rendered void or unenforceable as the result of any third party litigation, and City shall be free to exercise its legislative discretion to amend or repeal the Development Regulations applicable to the Property and Owner shall cooperate as required, despite this Agreement, should third party litigation result in the nonperformance of Owner's obligations under this Agreement. The provisions of this Section 13.10 shall apply regardless of whether the Effective Date occurs and after the Termination Date.

13.11 Construction.

This Agreement has been drafted after extensive negotiation and revision. Both City and Owner are sophisticated parties who were represented by independent counsel throughout the negotiations or City and Owner had the opportunity to be so represented and voluntarily chose to not be so represented. City and Owner each agree and acknowledge that the terms of this Agreement are fair and reasonable, taking into account their respective purposes, terms, and conditions. This Agreement shall therefore be construed as a whole consistent with its fair meaning, and no principle or presumption of contract construction or interpretation shall be used to construe the whole or any part of this Agreement in favor of or against either Party.

13.12 Successors and Assigns; Constructive Notice and Acceptance.

The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to Development of the Property: (i) is for the benefit of and is a burden upon every portion of the Property; (ii) runs with the Property and each portion thereof; and (iii) is binding upon each Party and each successor in interest during its ownership of the Property or any portion thereof. Every person or entity who now or later owns or acquires any right, title, or interest in any part of the Project or the Property is and shall be conclusively deemed to have consented and agreed to every provision of this Agreement. This Section 13.12 applies regardless of whether the instrument by which such person or entity acquires the interest refers to or acknowledges this Agreement and regardless of whether such person or entity has expressly entered into an assignment and assumption agreement as provided for in Section 11.

13.13 No Third Party Beneficiaries.

The only Parties to this Agreement are City and Owner. This Agreement does not involve any third party beneficiaries, and it is not intended and shall not be construed to benefit or be enforceable by any other person or entity.

13.14 Applicable Law and Venue.

This Agreement shall be construed and enforced consistent with the internal laws of the State of California, without regard to conflicts of law principles. Any action at law or in equity arising under this Agreement or brought by any Party for the purpose of enforcing, construing, or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, or the United States District Court for the Central District of California. The Parties waive all provisions of law providing for the removal or change of venue to any other court.

13.15 Section Headings.

All section headings and subheadings are inserted for convenience only and shall not affect construction or interpretation of this Agreement.

13.16 Incorporation of Recitals and Exhibits.

All of the Recitals are incorporated into this Agreement by this reference. Exhibits A and B are attached to this Agreement and incorporated by this reference as follows:

EXHIBIT DESIGNATION	DESCRIPTION
A	Legal Description of Property
B	Depiction of the Property

13.17 Recordation.

The City Clerk of City shall record this Agreement and any amendment, modification, or cancellation of this Agreement in the Office of the County Recorder of the County of Orange within the period required by California Government Code section 65868.5 and City of Newport Beach Municipal Code section 15.45.090. The date of recordation of this Agreement shall not modify or amend the Effective Date or the Termination Date.

**SIGNATURE PAGE TO
ZONING IMPLEMENTATION AND PUBLIC BENEFIT SPACE AGREEMENT**

“OWNER”

_____, a _____

By: _____

Its: _____

By: _____

Its: _____

“CITY”

CITY OF NEWPORT BEACH

By: _____

Its: Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Aaron Harp, City Attorney

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

Notary Public in and for
said County and State

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

Notary Public in and for
said County and State

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

[TO BE INSERTED]

EXHIBIT B

DEPICTION OF PROPERTY

[TO BE INSERTED]

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MICHAEL RECUPERO, ESQ.

Correspondence

Item No. 2c & 3b

Newport Beach Country Club

PA2005-140 and PA2008-152

November 16, 2011

Commissioners, Newport Beach Planning Commission
C/O Ms. Kimberly Brandt and Ms. Marlene Burns
CITY OF NEWPORT BEACH
3300 Newport Boulevard
Newport Beach, CA 92663

BY ELECTRONIC MAIL AND U.S. POST (CERTIFIED MAIL)

Re: November 17, 2011 Planning Commission Agenda Items 2 (PA 2005-140) and 3 (PA2008-152)

Dear Commissioners:

This letter is written on behalf of one-half of the ownership of the Newport Beach Country Club and Tennis Club (the "Properties")¹ which you are considering tomorrow night.

Comments on Agenda Item 2 (PA2005-140): Newport Beach Country Club, Inc.

We would reiterate our support for the Newport Beach Country Club, Inc. plan as a reasonable exercise of our tenant's authority to improve the leasehold interest, with the inclusion of the revised frontage road (Attachment 1) as reflected in the most recent staff report.

The Frontage Road. The frontage road is preferable from a planning standpoint, and:

1. Is the preference of the Applicant and the above referenced ownership interests;
2. Has been modified to be one-way, narrowed and provides for more desirable turning movements than originally proposed;
3. Provides a greater landscaping setback from PCH to the parking lot (approximately 20' difference) as compared to the "no frontage road" option;
4. Serves the operational needs of the IBC leasehold as well as the longstanding needs of the adjacent Armstrong Nursery;
5. Is consistent with mandates of the City's traffic engineering constraints.

¹ The Fainbarg Family Trust (managed by Irving Chase), the Mira Mesa Shopping Center-West, and the Mesa Shopping Center-East (managed by Elliot Feuerstein), collectively own 50% of the Properties.



Additionally, Attachment 2, the July 13, 2010 letter from the Tenant to the City, describes why maintaining the frontage road is the most prudent and legally defensible option. This should be considered in conjunction with Attachment 3 which sets out the relevant recorded documents, including the *Termination of Access Easement* document (Recordation No. 19970630399). The *Termination* only purports to conditionally terminate certain historic easements, and not others. Simply stated, the public record suggests that enforceable easement rights to the 26.5-foot easement (See, document Nos. 92-662454 and 93-0139174) continue to exist, in favor of Feuerstein and Fainbarg.

No Encumbrance on Fee Interest. Finally, we understand that the Applicant is required through the IBC Development Agreement to provide security for the leasehold improvements. We understand the Tenant has the right to encumber its leasehold interest, however, we do not consent to any new encumbrance or obligation, recorded or otherwise, which affects the underlying fee.

Comments on Agenda Item 3 (PA2008-152): Golf Realty Fund

We incorporate by reference the earlier letters on file relative to our position on this Planning Application and reiterate our position that Golf Realty Fund lacks the right to unilaterally entitle this property.²

Development Agreement. Inasmuch as the City has been provided with the title report, and the Owner's Agreement, we believe the City's decision to withhold the GRF Development Agreement from our review until yesterday is inequitable and unjustified. The Development Agreement suggests that it is binding on the "Property" as defined in section 2.2. and is required to be recorded. Our review of the law suggests that it be amended to require the consent of the Property owners, not just Golf Realty Fund. It should also set out the City's expectation that future discretionary permits and ministerial (building and grading permits) will require all owners' consent.

Planned Community Text. The current Planned Community Text draft does not adequately provide the owner flexibility to adjust the mixed-use element of the zoning allowed by General Plan Land Use designation MU-H3. As 50% of the ownership of this property has not approved the current development plan, we believe that providing such flexibility, and including a specific provision which allows for staff-level amendment, may ultimately allow the parties and the City to meaningfully address a revised plan on a go forward basis.

² We continue to believe that the City's reliance on the former Newport Beach Municipal Code Section 20.90.030(C) in denying our Client's the right to participate on this project is misplaced when the City is clearly relying on the amended Municipal Code for all other matters related to this project.



Thank you for your consideration.

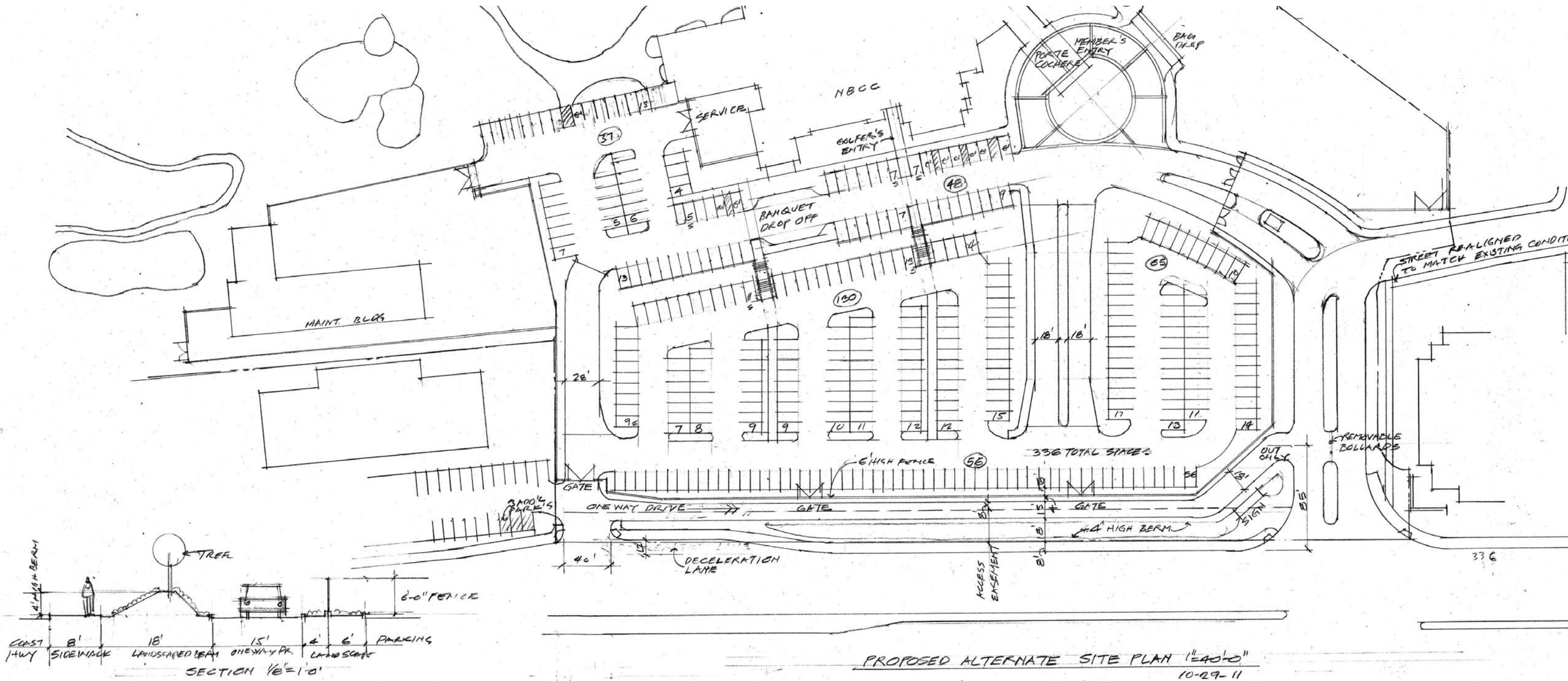
Sincerely,

A handwritten signature in black ink, appearing to be 'WR' with a flourish.

Michael Recupero, Esq.

Ecc:

Commissioner Ameri
Commissioner Kramer
Commissioner Toerge
Commissioner Hawkins
Commissioner Myers
Elliot Feuerstein
Irving Chase
John Olson, Esq.
Tim Paone, Esq.
Leonie Mulvihill, Esq.





July 13, 2010

City of Newport Beach
Attn: Rosalinh Ung
Planning Department
3300 Newport Boulevard
Newport Beach, CA 92663

Subject: PA 2008–152 Newport Beach Country Club, Frontage Road Access Easement

Dear Ms. Ung:

You recently forwarded to CAA Planning a copy of a First American Title Report (First American Report) dated June 2010 and asked for our review related to the access easement. The First American Report does not identify the existence of an access easement over the frontage road paralleling East Coast Highway. However, the 2008 Fidelity National Title Report (Fidelity Report) submitted by the Newport Beach Country Club (NBCC) does identify this easement. As you know, that easement has been, and continues to be used by motorists who patronize the Armstrong Nursery.

Based on our review of the First American Report, we concur that it does not disclose the 26.5 foot access easement (Instrument No. 93-0139174) identified in the Fidelity Report in favor of Russell Fluter, included as Attachment 1. The Fidelity Report correctly captured the 1993 Easement Deed granted to Russell Fluter by the Irvine Company, included as Attachment 2. As we have previously discussed, a 25 foot access easement over the frontage road held by Messrs Feuerstein and Fainbarg was terminated in 1996. The termination of the 25 foot easement is included as Attachment 3.

Records maintained by the County of Orange Recorder's office show a 2009 quitclaim deed and release of easement (Instrument No. 93-0139174) from Mr. Fluter to Messrs Feuerstein and Fainbarg. The quitclaim deed and release of easement is included as Attachment 4. The County Recorder's office does not show any subsequent action by Mr. Feuerstein or Mr. Fainbarg to terminate the 26.5 foot easement. We can assure the City of Newport Beach that our client, the NBCC, would have gladly foregone the excessive time and resources to produce site plan alternatives retaining the nursery access easement over the frontage road.

You have asked why the 26.5 foot access easement does not show on parcel map 79-704. It is our understanding that parcel maps are not revised or updated to display such easements. This is why the 1980 parcel map does not depict the 26.5 foot easement from 1993. We contacted First American Title Company in an effort to determine why their report does not capture the



Ms. Rosalinh Ung
July 13, 2010
Page 2 of 2

26.5 foot access easement over the frontage road, but they have not responded to our inquiry. In an abundance of caution, the City may wish to inquire of Mr. O'Hill whether he has documentation verifying the termination of the 26.5 foot easement following the 2009 release from Mr. Fluter to Messrs Feuerstein and Fainbarg.

Please contact us at your earliest convenience if you have any questions. Thank you.

Sincerely,

CAA PLANNING, INC.


Shawna L. Schaffner
Chief Executive Officer

cc: Mr. Dave Wooten
Mr. Patrick Alford

Attachments: 1. Excerpt from 2008 Fidelity National Title Report showing 26.5 foot access easement in favor of Russell Fluter
2. 1993 26.5 foot Access Easement Deed
3. 1996 25 foot Access Easement Termination
4. 2009 Quitclaim of Fluter 26.5 foot Access Easement to Feuerstein & Fainbarg



Fidelity National Title Company

PRELIMINARY REPORT

In response to the application for a policy of title insurance referenced herein, Fidelity National Title Company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a policy or policies of title insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an exception herein or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations or Conditions of said policy forms.


The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Attachment One. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Attachment One. Copies of the policy forms should be read. They are available from the office which issued this report.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

The policy(s) of title insurance to be issued hereunder will be policy(s) of Fidelity National Title Insurance Company, a California corporation.

Please read the exceptions shown or referred to herein and the exceptions and exclusions set forth in Attachment One of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land.


Countersigned

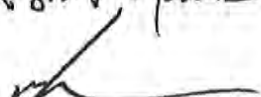


Fidelity National Title Company

BY


President

ATTEST


Secretary



Fidelity National Title Company

ISSUING OFFICE: 1300 Dove Street, Suite 310 • Newport Beach, CA 92660
949 622-5000 • FAX Call for Fax

PRELIMINARY REPORT

Amended

Title Officer: David James

Title No.: 08-**725116135**-A-DJ
Locate No.: CAFNT0972-0972-0051-0725116135

TO: California National Bank
1301 Dove Street, Suite 101
Newport Beach 92660

ATTN: Traci Dawson

SHORT TERM RATE:

PROPERTY ADDRESS: 1600 E. Coast Highway, Newport Beach, California

EFFECTIVE DATE: June 26, 2008, 07:30 A.M.

The form of policy or policies of title insurance contemplated by this report is:

ALTA Loan Policy (6/17/06)

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

A Fee

2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:

**ALLAN FAINBARG AND SARA FAINBARG, as Trustees of THE FAINBARG FAMILY TRUST, dated April 19, 1982, as to an undivided 25% interest;
GOLF REALTY FUND, a California limited partnership formerly known as NEWPORT BEACH COUNTRY CLUB, a California limited partnership, as to an undivided 25% interest;
MIRA MESA SHOPPING CENTER-WEST LLC, as to an undivided 10% interest;
MESA SHOPPING CENTER-EAST LLC, as to an undivided 15% interest;
GOLF REALTY FUND, a California limited partnership, as to an undivided 25% interest, all as tenants in common.**

3. THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

CJ\JK 07/08/2008

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

PARCEL 1 OF PARCEL MAP NO. 79-704, AS PER MAP FILED IN BOOK 152, PAGES 17 TO 20 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

AND THAT PORTION OF BACK BAY DRIVE AS SHOWN ON PARCEL MAP NO. 79-704, AS PER MAP FILED IN BOOK 152, PAGES 17 TO 20 OF PARCEL MAPS, THAT WOULD ATTACH BY OPERATION OF THE LAS TO ABUTTING PROPERTY OWNERS BY VACATION RECORDED October 17, 1989 AS INSTRUMENT NO. 89-558952 OFFICIAL RECORDS.

EXCEPTING THEREFROM ANY AND ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM, AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE LAND. TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK, OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE CONVEYED HEREBY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES; WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND, AS RESERVED IN THE DEED FROM THE IRVINE COMPANY, A MICHIGAN CORPORATION, RECORDED MARCH 9, 1993 AS INSTRUMENT NOS. 93-0158178, 93-0158179 AND 93-0158180, ALL OFFICIAL RECORDS.

APN 442-011-51 AND 52

PARCEL B:

PARCEL 3 OF PARCEL MAP NO. 79-704, AS SHOWN ON A MAP FILED IN BOOK 152, PAGES 17 TO 20 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ANY AND ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM, AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE LAND, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFROM AND STORING IN AND REMOVING THE SAME FROM THE LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE CONVEYED HEREBY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES; WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE

EXHIBIT "A" (continued)

Title No. 08-**725116135**-A-DJ
Locate No. CAFNT0972-0972-0051-0725116135

SUBSURFACE OF THE LAND, AS RESERVED IN THE DEED FROM THE IRVINE COMPANY, A MICHIGAN CORPORATION, RECORDED MARCH 9, 1993 AS INSTRUMENT NO. 93-0158178, 93-0158179 AND 93-0158180, ALL OF OFFICIAL RECORDS.

APN: 442-011-53

23. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: The Irvine Company
Purpose: Access, ingress, egress, maintenance, repair and landscaping purposes
Recorded: October 24, 1991, Instrument No. 91-582076, of Official Records
Affects: Parcel A

24. Intentionally Deleted

25. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Russell Fluter, a single man
Purpose: Ingress, egress
Recorded: March 1, 1993, Instrument No. 93-0139174, of Official Records
Affects: The Southwesterly 26.50 feet of Parcel B

26. **Covenants, conditions and restrictions** (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in the document

Recorded: March 9, 1993, Instrument No. 93-0158176, of Official Records

Said covenants, conditions and restrictions provide that a violation thereof shall not defeat the lien of any mortgage or deed of trust made in good faith and for value.

A mortgage with the power of sale executed by O Hill Properties, a California Limited Partnership, as to an undivided 50% interest; Allan Fainbarg and Sara Fainbarg, as Trustees of the Fainbarg Family Trust dated April 19, 1982 as to an undivided 35% interest; Mesa Shopping Center-East, a California General Partnership, as to an undivided 15% interest, all as tenants in common, as Mortgagor to the Irvine Company, a Michigan Corporation as mortgagee, for the purpose of Securing any and all increment of additional purchase price described in Section 3.4 (A) of and as set forth in the above referred to Declaration.

Was subordinated by an instrument recorded September 27, 1994 as Instrument No. 94-0581056 of Official Records, executed by Allan A. Fainbarg and Sara Fainbarg, trustees of the Fainbarg Family Trust dated April 19, 1982, as to an undivided 25% interest, Mesa Shopping Center-East, a California general partnership, as to an undivided 15% interest, Mira Mesa, Shopping Center-West, a California general partnership, as to an undivided 10% interest, O Hill Properties, a limited partnership, as to an undivided 25% interest, and Newport Beach Country Club, a California limited partnership, as to an undivided 25% interest, all as tenants in common, The Irvine Company, a Michigan corporation and Transamerica Life Insurance and Annuity Company, a California corporation, to the deed of trust which was recorded September 27, 1994 as Instrument No. 94-0581054 of Official Records.

#25

DOC # 93-0139174
01-MAR-1993 09:38 AM

RECORDING REQUESTED BY:
CHICAGO TITLE CO.
WHEN RECORDED MAIL TO:

O'NEIL & MYERS
610 Newport Center Drive
Suite 1700
Newport Beach, California 92660
Attention: Paul M. Mowley, Esq.
(415,102-2336)

Recorded in Official Records
of Orange County, California
Los A. Branch, County Recorder
Page 1 of 3 Page 0 11.00
Tax 0 0.00

This Easement Deed is exempt pursuant to Section 1-1-167 of the
Transfer Tax Ordinance of the County of Orange

CONVEYANCE WITHOUT CONSIDERATION - No Tax Due
Charles S. Myers
Attorney

EASEMENT DEED

(Amalgam's)

The undersigned, THE IRVING COMPANY, a Michigan corporation
("grantor"), hereby grants to Russell Fluter, a single man
("grantee"), non-exclusive easements as set forth in that certain
instrument entitled "Declaration of Access Easements" dated as of
September 29, 1992 and recorded on October 1, 1992 as Instrument
No. 92-662482, as amended by that certain First Amendment to
Declaration of Access Easement dated as of October 15, 1992 and
recorded concurrently herewith, over and across that certain real
property described in Exhibit A attached hereto.

Dated: February 12, 1993

THE IRVING COMPANY,
a Michigan corporation

By:

Richard G. Sim,
Executive Vice President

By:

Donald McQuitt,
Vice President



This document filed for record as
an accommodation only. It has not
been examined as to its execution
or as to its effect upon the title.

STATE OF CALIFORNIA

COUNTY OF ORANGE

88.

On February 12, 1993, before me, a Notary Public in and for said state, personally appeared Richard G. Sia and Donald McWitt, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledge to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which such persons acted, executed the instrument.

WITNESS my hand and official seal.



Bonnie L. Reid
Notary Public in and for
said County and State



EXHIBIT A

DESCRIPTION OF EASEMENT AREA

AN EASEMENT FOR INGRESS AND EGRESS PURPOSES OVER THE SOUTHWESTERLY 26.50 FEET OF PARCEL 3 PARCEL MAP NO. 79-704, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 152, PAGES 17 THROUGH 20, INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY.

ENC-1118571

A-1

10/11/18

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

NBCC LAND
One Upper Newport Plaza
Newport Beach, CA 92660

Recorded in the County of Orange, California
Gary L. Granville, Clerk/Recorder



21.00

19970630399 4:29pm 12/08/97

005 22033011 22 42

T01 6 6.00 15.00 0.00 0.00 0.00 0.00

TERMINATION OF ACCESS EASEMENT

THIS TERMINATION OF ACCESS EASEMENT is made as of November 30, 1996, by ARNOLD D. FEUERSTEIN and ALLAN FAINBARG (collectively referred to as "Owners"), who are the fee owners of the property located at 1500 E. Pacific Coast Highway, Newport Beach, California, legally described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property")

ARTICLE I RECITALS

A. The Property is partially served for ingress and egress by a secondary access road which runs parallel and adjacent to Pacific Coast Highway and is located upon the adjacent Newport Beach County Club property (the "Secondary Access").

B. The Property's rights to use the Secondary Access is by way of that certain non-exclusive easement and right of vehicular and pedestrian ingress and egress set forth in that certain instrument entitled "Declaration of Access Easement" dated as of September 29, 1992 and recorded on October 1, 1992 as Instrument No. 92-662452 in the Official Records of Orange County, California, as amended by that certain First Amendment to Declaration of Access Easement dated as of October 15, 1992 and recorded March 1, 1993 as Instrument No. 93-0139175 in the Official Records, such easement being described on Exhibit "B" attached hereto and incorporated herein by this reference ("the Existing Easement").

C. The City of Newport Beach has requested that the Existing Easement be abandoned because the Secondary Access creates a hazardous traffic condition at the entry to Newport Beach Country Club and contributes to an unsightly condition along Pacific Coast Highway, and Owners concur and are willing to comply with the City's request to abandon the Existing Easement.

D. Owners of the adjacent Newport Beach Country Club property intend to remove the Secondary Access through a portion of the Newport Beach Country Club property described in Exhibit "C" and replace it with landscaping along Pacific Coast Highway per Newport Beach Country Club Master Plan, Tentative Tract 15348, and a landscape plan approved by the City of Newport Beach. The result will be a significant aesthetic improvement along Pacific Coast Highway.

ARTICLE II
TERMINATION OF ACCESS EASEMENT

1. Owners hereby terminate and relinquish their rights in the Existing Easement.

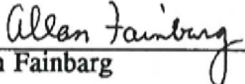
2. Owners' termination of the Existing Easement is conditioned on the City of Newport Beach not prohibiting ingress and egress to the Property primary and direct access from the existing two Pacific Coast Highway curb cuts in front of the Property which have been in use for many years.

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the date first above written.

OWNERS:



Arnold D. Feuerstein

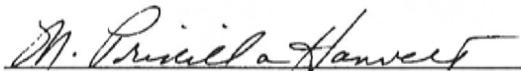


Allan Fainbarg

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

On December 13, 1996, before me a Notary Public in and for said County and State, personally appeared Allan Fainbarg, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument he, or the entity upon behalf of which he acted, executed the instrument.

WITNESS my hand and official seal.

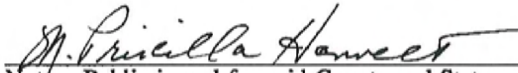

Notary Public in and for said County and State



STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

On December 13, 1996, before me a Notary Public in and for said County and State, personally appeared Arnold D. Feuerstein, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument he, or the entity upon behalf of which he acted, executed the instrument.

WITNESS my hand and official seal.


Notary Public in and for said County and State



terminat.acc

DESCRIPTION OF PROPERTY

Lot 1 of Tract No. 11937, in the City of Newport Beach, County of Orange, State of California, as shown on a Map recorded in Book 656, Pages 24 through 29, inclusive, of Miscellaneous Maps, in the Office of the County Recorder of said County, as corrected by that Tract or Parcel Map Certificate of Correction recorded February 5, 1991 as Instrument No. 91-052940 of Official Records.

EXHIBIT "A"

terminat.acc

NON-EXCLUSIVE EASEMENT FOR
INGRESS AND EGRESS PURPOSES

AN EASEMENT FOR INGRESS AND EGRESS PURPOSES OVER THE SOUTHWESTERLY 25.00 FEET OF PARCEL 3 OF PARCEL MAP NO. 79-704, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 152, PAGES 17 THROUGH 20, INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY.

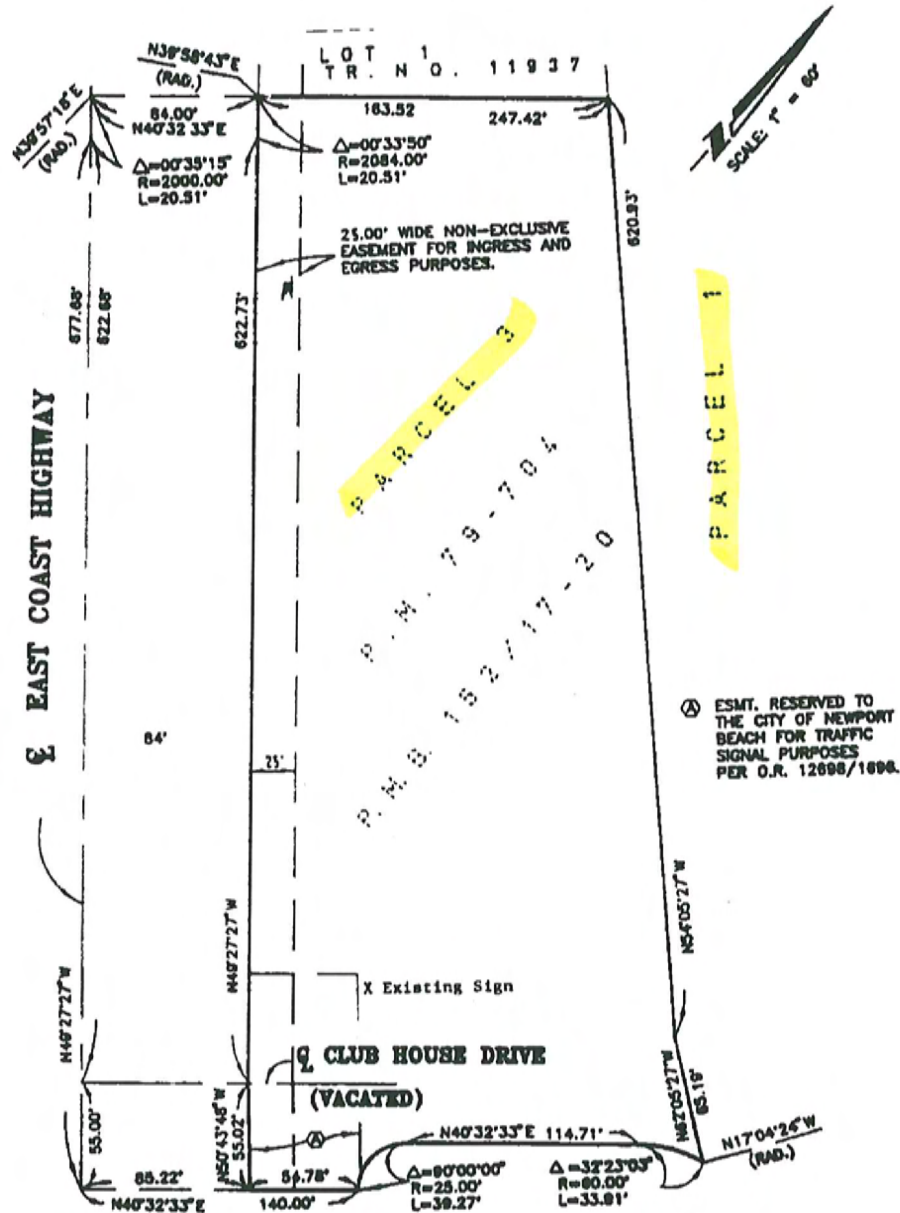


EXHIBIT "B"

terminat.acc

NEWPORT BEACH COUNTRY CLUB

(Portion containing Secondary Access)

Parcel 3 and Parcel 1 of Parcel Map No. 79-704, in the City of Newport Beach, County of Orange, State of California, as shown on a Map recorded in Book 152, Pages 17 through 20, inclusive, of Parcel Maps, in the Office of the County Recorder of said County.

EXHIBIT "C"

terminat.acc

Being Requested By
Fidelity National Title

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL
DOCUMENT:**

Arnold D. Feuerstein, Trustee
Allan Fainbarg, Trustee
129 W. Wilson St., Ste. 100
Costa Mesa, CA. 92627
Attention: Irving M. Chase, Esq.

RFluter - DS

Recorded in Official Records, Orange County

Tom Daly, Clerk-Recorder



32.00

2009000658760 02:18pm 12/08/09

106 402 Q01 3

0.00 0.00 0.00 20.00 8.00 0.00 0.00 0.00

Space Above This Line for Recorder's Use Only

MAIL TAX STATEMENTS TO:

Documentary Transfer Tax: \$0

The value and consideration is less than \$100.00 and there is no additional consideration received by the Grantor, R & T 11911

QUITCLAIM DEED AND RELEASE OF EASEMENT

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **RUSSELL FLUTER**, an individual ("Grantor"), remises, releases and quitclaims to **ARNOLD D. FEUERSTEIN, TRUSTEE OF THE FEUERSTEIN COMMUNITY PROPERTY TRUST** dated **April 13, 1982**, an undivided one-half interest, and **ALLAN FAIBARG, TRUSTEE OF THE FAIBARG FAMILY** dated **April 19, 1982**, an undivided one-half interest, (collectively, "Grantee"), all of the Grantor's right, title, and interest in and to that certain non-exclusive easement granted pursuant to that certain instrument entitled Easement Deed (Amling's) ("Deed") recorded in the Official Records of Orange County, California on March 1, 1993 as Instrument Number 93-0139174, or by any other instrument, as such easement is legally described on Exhibit A ("the Property"), attached hereto and incorporated herein by this reference.

Without limiting the generality of the foregoing, the Grantor hereby releases all rights and obligations associated with the easement pursuant to the Agreement. From and after the date this Quitclaim Deed and Release of Easement is recorded, title to the Easement shall vest in the Grantee.

Grantor has caused this Quitclaim Deed to duly executed on October 23, 2009.

FIDELITY NATIONAL TITLE INSURANCE
COMPANY HAS RECORDED THIS INSTRUMENT
BY REQUEST AS AN ACCOMMODATION ONLY
AND HAS NOT EXAMINED IT FOR REGULARITY
AND SUFFICIENCY OR AS ITS EFFECT UPON
THE TITLE TO ANY REAL PROPERTY THAT
MAY BE DESCRIBED THEREIN.

Russell Fluter
Russell Fluter

EXHIBIT A
Legal Description of Easement

AN EASEMENT FOR INGRESS AND EGRESS PURPOSES OVER THE SOUTHWESTERLY 26.50 FEET OF PARCEL 3 PARCEL MAP NO. 79-704, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 152, PAGES 17 THROUGH 20, INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY

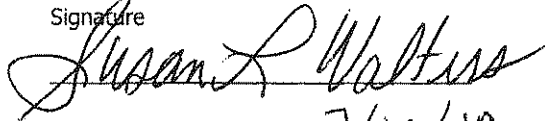
A.P.N.:

File No.: dnehaus (dn)

STATE OF California)SS
COUNTY OF Orange)On 10/23/09, before me, Susan L. Walters, Notary
Public, personally appeared Russell F. Luter, who proved to me on the basis of satisfactory evidence to
be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on
the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is
true and correct.

WITNESS my hand and official seal.

Signature

My Commission Expires: 7/10/10

This area for official notarial seal

Notary
Name: Susan L. Walters
Notary Registration
Number: 1675021Notary
Phone: 949 722-7400
County of Principal Place of
Business: Orange

Armstrong (Amling) Access Easement

10/24/2011

Instrument	Parties		Description	Width	Date signed	Date recorded
	Grantor	Grantee				
92-662452	Irvine Company	Amling Nursery Owners	Declaration of access easement (Amling's Nursery)	25 feet	9/29/1992	10/1/1992
92-662454	Irvine Company	Russell Fluter-A single man	Grant Deed subject to the Declaration of access easement dated 9-29-1992, recorded concurrently			10/1/1992
93-0139174	Irvine Company	Russell Fluter-A single man	Easement Deed (Amling's)	26.5 feet	2/12/1993	3/1/1993
93-0139175	Irvine Company	Russell Fluter-Amling Nursery Owner	First Amendment to access Easement 92-662452	Increased to 26.5 feet	10/15/1992	3/1/1993
93-0158180	Irvine Company	Fainbarg	Grant Deed	No width specified	3/3/1993	3/9/1993
19970630399	Feuerstein & Fainbarg		Termination of Access Easement 92-662452 & 93-0139175	Document references easement (25 ft.) and amendment (to 26.5 ft.);therefore termination is 26.5 ft.	12/13/1996	12/8/1997
19960167327	Russell Fluter	Fainbarg	Grant Deed	Grants non-exclusive easements as set forth in 92-662452	4/2/1996	4/4/1996
19960167328	Russell Fluter	Feuerstein	Grant Deed	Grants non-exclusive easements as set forth in 92-662452	4/2/1996	4/4/1996
2009000658760	Russell Fluter	Feuerstein & Fainbarg	Quitclaim Deed and Release of Easement	Release 93-0139174 to Feuerstein and Fainbarg	10/23/2009	12/8/2009

Burns, Marlene

From: Ung, Rosalinh
Sent: Wednesday, November 16, 2011 3:06 PM
To: Burns, Marlene
Subject: GRF - Compromise Plan #11
Attachments: 11.11.16 LS response to IBC-LeeSak comments.doc; ATT28003202.htm; 11.11.15 Comp11.pdf; ATT28003203.htm

For admin record...

From: Leland Stearns [<mailto:LELAND@STEARNSARCHITECTURE.COM>]
Sent: Wednesday, November 16, 2011 1:04 PM
To: Douglas Lee
Cc: Ung, Rosalinh; Brandt, Kim; Tim Paone; Byron de Arakal; Robert O Hill; Campbell, James; Michael Toerge; Bradley Hillgren; Robert C. Hawkins; Fred Ameri; Kory Kramer; Dave Wooten; jjohnson@balboabayclub.com; pdickey@newportbeachcc.com
Subject: GRF/IBC Compromise Plan #11

Per Robert O Hill's request I am sending you Compromise Master Plan #11 and a written response to your memo of Nov. 2, 2011.

November 16, 2011

BY EMAIL:

Doug Lee, AIA
Lee & Sakahara Architects
16842 Von Karman Ave., Suite 300
Irvine, CA 92606

Re: NBCC PCD Compromise 11

Attached is Master Plan Compromise 11 responsive to your comment letter dated November 2, 2011.

In my professional opinion, 1) Master Plan Compromise 11 shows that the IBC Golf Clubhouse and the GRF Golf Parking Lot Design can easily work together with IBC's cooperation and 2) GRF's Golf Parking Lot design shown on Master Plan Compromise 11 is a much better aesthetic and pedestrian solution than IBC's golf parking lot.

Below is a detailed response to your letter with their comments shown first in black followed by my responses in blue italics.

- Plan indicates 334 parking spaces but actual count is 327 plus 5 spaces in the Maintenance Yard total count = 332 spaces

Please see the attached Master Plan Compromise 11 where an additional 7 parking spaces have been added and 5 spaces in maintenance yard eliminated for a total of 334. (Parking Required is 244 spaces) If the GRF Golf Parking Lot design is adopted GRF has agreed to make available to IBC the non-exclusive parking easement over Corporate Plaza West for weekends and holidays for an additional 554 additional parking spaces.

- Plan does not address existing access easement. If easement is maintained, this will further reduce parking spaces.

The Frontage Road Easement has been terminated. The City of Newport Beach Planning Commission at their October 2011 hearing indicated that they unanimously desire a golf parking lot site plan without the hazardous and unsightly Frontage Road. If Frontage Road remains the primary loss will be to the significant landscape buffer along PCH and traffic safety. Until that Public hearing IBC has always indicated that IBC preferred a site plan without the Frontage Road.

- Plan does not allow semi-trucks to maneuver in the parking lot. No staging areas for major events.

Please see the LSA Study and Stearns Architecture prior Major Tournament Staging Plan demonstrating that trucks can maneuver in the parking lot and staging areas for major events can be accommodated.

- Plan reduces the upper level prime parking by 32 spaces.

The IBC plan has approximately 80 cars in the upper level parking area. The GRF Compromise 11 has 57 cars in the upper level parking area. The GRF plan makes all the parking better and does not have the significant grade difference between prime golf parking and secondary parking shown in the IBC plan requiring stairways with an extensive number of steps from the very large secondary parking area. Master Plan Compromise 11 has 2 additional parking stalls adjacent to the Golf Clubhouse.

- Plan provides only one sidewalk in the parking lot. Travel distance to the sidewalk at the east parking lot is approximately 290' and approximately 230' at the west parking lot. This layout will encourage members to "cut through" the landscaped islands and between cars (shortest path to the front door.

Two more pedestrian sidewalks have been added in attached Compromise 11. The Master Plan Compromise 11 is more pedestrian and golf cart friendly. (See the LSA Study)

- The primary access to parking from the Porte Cochere is offset requiring two turns to access parking lot.

With both the GRF and the IBC plans there are two turns. With Master Plan Compromise 11 there are two turns when leaving the Porte Cochere and going to the parking area. With the IBC's schematic plan there are two turns when leaving the parking area and returning to the Porte Cochere.

- Plan encroaches 10'-20' into the golf course at the 18th green area.

Please see the revised Master Plan Compromise 11 which eliminates encroachment.

- Plan encroaches into Maintenance Yard.

Please see Master Plan Compromise 11, which eliminates this very minor encroachment.

- 5 spaces in the Maintenance yard should be deleted. This space is allocated for golf course maintenance bins.

See attached Master Plan Compromise 11 where the 5 spaces in the Maintenance Yard have been deleted.

- Due to the terraced parking concept, taller plant material will be required to effectively conceal the automobiles. See attached section.

With the terraced design the goal is not to conceal the cars but to mitigate the “Sea of Asphalt” and to create a far more aesthetic environment and public view from PCH. Much of the time the parking lot is mostly empty.

- Plan indicates reduced service yard.

Please see the attached Master Plan Compromise 11 with no reduction to Maintenance Yard area.

- Plan indicates an 85’ driveway along Coast Highway between NBCC and the Nursery. City may have some issues.

Please see Master Plan Compromise 11, which eliminates the 85’ driveway and is now identical to IBC’s Preliminary Site Plan.

- Orientation of the Clubhouse has changed.

The Golf Clubhouse in Compromise 11 is now in the identical location as IBC’s Preliminary Site Plan.

On a related point since I have not heard back from you regarding development of the cohesive, comprehensive Landscape Plan, Master Plan Lighting and Sign Plan which I assume we are in agreement on doing.

Sincerely yours,

Leland Stearns

ec: Michael Toerge, City of Newport Beach, Planning Commissioner
 Bradley Hillgren, City of Newport Beach, Planning Commissioner
 Robert Hawkins, City of Newport Beach, Planning Commissioner
 Fred Ameri, City of Newport Beach, Planning Commissioner
 Kory Kramer, City of Newport Beach, Planning Commissioner
 Kim Brandt, City of Newport Beach, Community Development Director
 Jim Campbell, City of Newport Beach, Principal Planner
 Rosalinh Ung, City of Newport Beach, Associate Planner
 Dave Wooten, IBC, President & CEO
 Jerry Johnson, IBC, EVP & CFO
 Perry Dickey, Newport Beach Country Club, President
 Tim Paone
 Byron de Arakal
 ROH

s t e a r n s
 ARCHITECTURE

